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SUPREME COURT OF THE UNITED STATES.

No. ~~210~~ 112

WELLINGTON W. WITHENBURY AND ROSS W. DOYLE, CLAIMANTS OF 935 BALES OF COTTON, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED JULY 17, 1866.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES

No. 270.

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1 UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

Pleas in the district court of the United States for the southern district of Illinois, held at the city of Springfield, in said district, before the honorable Samuel H. Treat, judge of said court, on Monday, the sixth day of November, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

THE UNITED STATES
vs.
650 BALES OF COTTON, 100 COILS OF ROPE, 16 bales, 8 rolls, and 160 pieces of bagging, 29 pieces of leather; 788 bales, 52 sacks of cotton; 409 bales, 139 sacks of cotton, and 1,000 bales of cotton.
WITHENBURY & DOLYE, claimants of 935 bales of cotton.
} In prize.

2 Be it remembered that heretofore, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, came Lawrence Weldon, district attorney of the United States for the southern district of Illinois, and filed in the office of the clerk of the district court of the United States for said district a libel in behalf of the United States and all others concerned, against 650 bales cotton, 100 coils rope, 16 bales of bagging, 8 rolls bagging, 160 pieces bagging, 29 pieces of leather, in a cause of prize, which said libel is in the words and figures following, to wit:

Libel.

District court.—In prize.

UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

Be it remembered that on the 18th day of May, 1864, before the Hon. Samuel H. Treat judge of said court, comes Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons con-
3 cerned, propounds and gives the said judge to understand and be informed that, on or about the 20th day of March, A. D. 1864, on waters navigable to the sea by vessels of ten or more tons burden, or on lands adjacent thereto, the navy of the United States did seize, as lawful prize of war, the following, to wit: 650 bales cotton, 100 coils rope, 16 bales of bagging, 8 rolls bagging, 160 pieces bagging, 29 pieces of leather, which are now at the port of Cairo, and within the jurisdiction of this court.

The said attorney alleges that all and singular the premises are true and within the prize jurisdiction of this court, and that all of the said property so captured is lawful prize of war.

Wherefore the said attorney prays that process of attachment may issue against said property, and the monition of this honorable court in that behalf to be made, and that all persons interested in said

property may be cited to appear and answer all and singular the allegations of this libel; and all due proceedings being had, your honor will adjudge and decree a condemnation of said property as prize of war, and that the proceeds thereof may be distributed
4 according to law.

L. WELDON, *U. S. Att'y.*

Filed May 18th, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Whereupon a writ of attachment and monition was issued against said property directed to the marshal of the southern district of Illinois to execute, and was afterwards, to wit, on the nineteenth day of May, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto, are in the words and figures following, to wit:

Attachment and monition.

THE UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

The United States of America to the marshal of the southern district, of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of Illinois, on the eighteenth day of May, in the year of our Lord one thousand eight hundred
5 and sixy-four, by L. Weldon, district attorney of the United States for said district, in behalf of the United States and of all other persons concerned, against six hundred and fifty bales of cotton, one hundred coils rope, sixteen bales of bagging, eight rolls of bagging, one hundred and sixty pieces bagging, and twenty-nine pieces of leather, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the condemnation thereof as lawful prize of war:

You are therefore commanded to attach the said six hundred and fifty bales of cotton, one hundred coils of rope, sixteen bales of bagging, eight rolls of bagging, one hundred and sixty pieces of bagging, and twenty-nine pieces of leather, and to detain the same in your custody until the further order of this court respecting the
6 same, and to give due notice, by publication in the Illinois State Register for fourteen days previous to the day of trial, of such seizure and libel, to all persons claiming the said six hundred and fifty bales of cotton, one hundred coils of rope, sixteen bales of bagging, eight rolls of bagging, one hundred and sixty pieces of bagging, and twenty-nine pieces of leather, or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of said libel; and that they be and ap-

pear before the said court to be held in and for the southern district of Illinois, at the United States court-room in the city of Springfield, in said district, on the first Monday in June next, if that be a day of jurisdiction, if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return, together with this writ.

Witness the Hon. Samuel H. Treat, judge of our said court,
7 this eighteenth day of May, in the year of Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

[L. S.] GEO. P. BOWEN, *Clerk*.

Marshal's return.

By virtue of this writ I have this day levied on and attached the within described property, and made due proclamation thereof, and as said property is perishable and liable to be destroyed, I respectfully recommend its sale, pending proceedings against the same, this 19th day of May, 1864.

D. L. PHILLIPS, *U. S. Marshal*.

Filed this 19th day of May, 1864.

GEO. P. BOWEN, *Clerk*.

Notice of libel and seizure.

UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

Whereas on the 18th day of May, A. D. 1864, L. Weldon, United States district attorney, filed a libel in the district court of the
8 United States for the southern district of Illinois, against 650 bales of cotton, one hundred and eighty coils rope, sixteen bales of bagging, eight rolls of bagging, 180 pieces of bagging, and 29 pieces of leather, in a cause of condemnation and forfeiture; and whereas by virtue of process in due form of law to me directed, returnable on the first Monday in June next, I have seized upon and taken the said property, and have the same in my custody: Notice is hereby given that a district court of the United States will be held at the United States court-room in the city of Springfield, on the first Monday in June next, for the trial of the said premises, and the owner or owners, and all persons who have or claim any interest, are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not pass as prayed.

Springfield, May 20, 1864.

D. L. PHILLIPS, *U. S. Marshal*.

Certificate of publication.

The undersigned, publisher of the Illinois State Register,
9 a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for

fourteen days successively, the first publication thereof having been made on the 21st day of May, A. D. 1864, and the last on the 5th day of June, A. D. 1864.

Illinois State Register Printing Co., publishers Illinois State Register, per-- D. O. C.

Filed June 6, 1864.

GEO. P. BOWEN, *Clerk.*

On the said nineteenth day of May, in the year last aforesaid, the following proceedings were had in said court in said cause, and entered of record, to wit:

Order of sale pendente site.

THE UNITED STATES
vs.
SIX HUNDRED AND FIFTY BALES OF COTTON, ONE hundred coils of rope, sixteen bales, eight rolls, and one hundred and sixty pieces of bagging, and twenty-nine pieces of leather. } In prize.

It appearing to the court, from the return of the marshal to
10 the writ of monition issued in this case, that he has attached the said six hundred and fifty bales of cotton, one hundred coils of rope, sixteen bales, eight rolls, one hundred and sixty pieces of bagging, and twenty-nine pieces of leather, and that the same are perishable and liable to destruction, it is thereupon ordered by the court that the said property be sold by the marshal, under and by virtue of a writ of venditioni exponas, to be issued by the clerk of the court in accordance with the rules and practice of the court, and that upon making such sale the marshal deposit the proceeds thereof with the assistant treasurer of the United States at St. Louis, subject to the order of the court. It is further ordered that said writ be made returnable on the second Monday of June next, and that the marshal give notice of said sale by publication in the newspaper designated by the court, and also in one or more newspapers published in the cities of Chicago, St. Louis, Cincinnati, and Cairo.

And thereupon a writ of venditioni exponas was issued, directed to the marshal of said district to execute, and was afterwards, to
11 wit, on the twenty-first day of June, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto and the certificate of deposit filed therewith, are in the words and figures following, to wit:

Venditioni exponas.

THE UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel was filed in the district court of the United States for the southern district of Illinois, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four,

by Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States of America and of all other persons concerned, against six hundred and fifty bales of cotton, one hundred coils of rope, sixteen bales of bagging, eight rolls of bagging, one hundred and sixty pieces of bagging, and
12 twenty-nine pieces of leather, praying that the same may be condemned and sold for the causes in said libel alleged; and whereas the above-described property has been attached by process issued out of said district court in pursuance of the said libel, and is now in custody by virtue thereof, and such proceedings have been thereupon had that by the decree of said court in this cause made on the nineteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, the said above-described property was ordered to be sold by you, the said marshal, after giving ten days' notice of such sale according to law: Therefore, you, the said marshal, are hereby commanded to cause said above-described property to be sold, in manner and form, upon the notice, and at the time and place required by law, and that you deposit the money arising from such sale with the assistant treasurer of the United States at St. Louis; and have you a certificate thereof, together with a return of your proceedings herein, in said court, at Springfield, in said district, on
13 the second Monday in June, in the year of our Lord one thousand eight hundred and sixty-four, and have you also then and there this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this nineteenth day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

[L. S.] GEO. P. BOWEN, *Clerk.*

Notice of sale.—United States marshal's sale in admiralty.

By virtue of a writ of sale issued out of the United States district court for the southern district of Illinois, in admiralty, dated on the 19th day of May, A. D. 1864, will be sold at public auction to the highest bidder for cash, at Cairo, in said district, on the 8th day of June, A. D. 1864, the following described property, to wit: six hundred and fifty bales of cotton, 100 coils of rope, 16 bales of bagging, eight rolls of bagging, 160 pieces of bagging, and 29 pieces of leather, the same having been ordered by the court to be sold for the
14 benefit of those whom it may concern.

Springfield, Ill's, May 20, 1864.

D. L. PHILLIPS, *U. S. Marshal.*

Certificate of publication.

The undersigned, publisher of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for ten days successively, the first publication thereof having been made on the 21st day of May, A. D. 1864, and the last on the 1st day of June, A. D. 1864.

Illinois State Register Printing Co., publishers Illinois State Register, per— D. O. C.

Filed June 21, 1864. GEO. P. BOWEN, *Clerk.*

Marshal's return to venditioni exponas.

By virtue of this writ, I sold on the 8th day of June, A. D. 1864, the within described property, for the sum of two hundred seventy-two thousand four hundred thirty-seven and $\frac{39}{100}$, and have deposited the same with the assistant United States treasurer at St. Louis, the certificate of which deposit I now return with this writ.

D. L. PHILLIPS, *U. S. Marshal.*

Filed June 21, 1864.

GEO. P. BOWEN, *Clerk.*

Certificate of deposit.

$272,437 39. OFFICE OF ASSISTANT TREASURER U. S.,
St. Louis, Mo., June 18, 1864.

I certify that D. L. Phillips, U. S. marshal for the southern district of Illinois, has this day deposited to the credit of the district court of the United States for said district, in the case of the United States *vs.* 650 bales cotton, &c., two hundred and seventy-two thousand four hundred thirty-seven and $\frac{39}{100}$ dollars, proceeds of sale in said cause.

(Original.) BEN. FARRAR, *Assistant Treasurer.*

Filed June 21, 1864.

GEO. P. BOWEN, *Clerk.*

On the twenty-first day of May, in the year last aforesaid, came again the said Lawrence Weldon, district attorney of the United States for said district, and filed in the office of the clerk of said court a libel in behalf of the United States and all others concerned, against seven hundred and eighty-eight bales and fifty-two sacks of cotton, in a cause of prize, which said libel is in the words and figures following, to wit:

Libel.

District court.—In prize.

UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

Be it remembered that, on the 21st day of May, A. D. 1864, before the Hon. Samuel H. Treat, judge of the said court, comes Lawrence Weldon, district attorney for the United States for said district, in the name and behalf of the United States and of all other persons concerned, propounds and gives the said judge to understand and be informed that on or about the 1st day of April, A. D. 1864, on waters navigable to the sea by vessels of ten or more tons burden, or on lands adjacent thereto, the navy of the United States did seize as lawful prize of war the following, to wit, seven hundred and eighty-eight bales aad fifty-two sacks of cotton, which are now at the port of Cairo, and within the jurisdiction of this court. The said

attorney alleges that all and singular the premises are true and within the prize jurisdiction of this court, and that all of the said property so captured is lawful prize of war. Wherefore the said attorney prays that process of attachment may issue against said property and the monition of this honorable court in that behalf to be made, and that all persons interested in said property may be cited to appear and answer all and singular the allegations of this libel, and all due proceedings being had, your honor will adjudge and decree a condemnation of said property as prize of war, and that the proceeds thereof may be distributed according to law.

L. WELDON, *U. S. Att'y.*

Filed May 21, 1864.

GEO. P. BOWEN, *Clerk.*

18 Whereupon the following proceedings were had in said court in said cause, and entered of record, to wit:

Order for process.

THE UNITED STATES
vs.
788 BALES and 52 SACKS COTTON. } In prize.

It is ordered by the court that a writ of monition issue in this cause, returnable on the second Monday of June next.

And thereupon a writ of attachment and monition issued against said property, directed to the marshal of the southern district of Illinois to execute, and was afterwards, to wit, on the twenty-third day of May, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto, are in the words and figures following, to wit:

Attachment and monition.

THE UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

19 The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of Illinois, on the twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four, by L. Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons concerned, against seven hundred and eighty-eight bales and fifty-two sacks of cotton, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the condemnation thereof as lawful prize of war: You are therefore commanded to attach the said seven hundred and eighty-eight bales

and fifty-two sacks of cotton, and to detain the same in your
20 custody until the further order of this court respecting the same, and to give due notice by publication in the Illinois State Register for fourteen days previous to the day of trial, of such seizure and libel to all persons claiming the said seven hundred and eighty-eight bales and fifty-two sacks of cotton, or knowing or having anything to say why this court should not pronounce against the same according to the prayer of said libel, and that they be and appear before the said court to be held in and for the southern district of Illinois, at the United States court-room, in the city of Springfield, in said district, on the second Monday in June next, if that be a day of jurisdiction, if not, then on the first day of jurisdiction theaeafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return, together with this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this twenty-first day of May, in the year of our Lord one thousand
21 eight hundred and sixty-four, and of our independence the eighty-eighth.

[L. S.] GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I have attached and seized the within described property, and made due proclamation of the same, and as said property is perishable and liable to be destroyed, I respectfully recommend its sale pending proceedings, on this 23d day of May, 1864.

D. L. PHILLIPS, *U. S. Marshal.*

Filed this 23d day of May, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of libel and seizure.

UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

Whereas, on the 21st day of May, A. D. 1864, L. Weldon, United States district attorney, filed a libel in the district court of the United States for the southern district of Illinois, against 788 bales
22 and 52 sacks of cotton, in a cause of condemnation and forfeiture; and whereas, by virtue of process in due form of law to me directed, returnable on the second Monday in June next, I have seized upon and taken the said property and have the same in my custody: Notice is hereby given that a district court of the United States will be held at the United States court-room in the city of Springfield, on the second Monday in June next, for the trial of the said premises, and the owner or owners, and all persons who have or claim any interest, are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not pass as prayed.

D. L. PHILIPS, *U. S. Marshal.*

Springfield, May 23, 1864.

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for fourteen days successively, the first publication thereof having been made
23 on the 24th day of May, A. D. 1864, and the last on the 8th day of June, A. D. 1864.

Illinois State Register Printing Co., publishers Illinois State Register, per— D. O. C.

Filed June 13th, 1864.

GEO. P. BOWEN, *Clerk.*

On the said twenty-third day of May, in the year last aforsaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of sale pendente lite.

THE UNITED STATES
vs.
788 BALES and 52 SACKS OF COTTON. } In prize.

It appearing to the court, from the return of the marshal to the writ of monition issued in this cause, that he has attached the said seven hundred and eighty-eight bales and fifty-two sacks of cotton, and that the same is perishable and liable to destruction—

It is thereupon ordered by the court that the said property
24 be sold by the marshal under and by virtue of a writ of venditioni exponas, to be issued by the clerk of this court, in accordance with the rules and practice of the court; and that upon making such sale the marshal deposit the proceeds thereof with the assistant treasurer of the United States at St. Louis, subject to the order of the court. It is further ordered that said writ be made returnable on the second Monday of June next, and that the marshal give notice of such sale by publication in the newspaper designated by the court, and also in one or more newspapers published in the cities of Chicago, St. Louis, Cincinnati, and Cairo.

And thereupon a writ of venditioni exponas was issued, directed to the marshal of said district to execute, and was afterwards, to wit, on the twenty-first day of June, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto and the certificate of deposit filed therewith, are in the words and figures following, to wit :

25 *Venditioni exponas.*

THE UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

The United States of America to the marshal of the southern district of Illinois, greeting :

Whereas a libel was filed in the district court of the United States for the southern district of Illinois, on the twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four,

by L. Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons concerned, against seven hundred and eighty-eight bales and fifty-two sacks of cotton, praying that the same be condemned and sold for the causes in said libel alleged; and whereas the said seven hundred and eighty-eight bales and fifty-two sacks of cotton has been attached by process issued out of said district court, in pursuance of the said libel, and is now in custody by virtue thereof, and such proceedings have been thereupon had that by the decree of said court in this cause made on the twenty-third day of May, in the year of our
26 Lord one thousand eight hundred and sixty-four, the said seven hundred and eighty-eight bales and 52 sacks of cotton was ordered to be sold by you, the said marshal, after giving ten days' notice of such sale according to law: Therefore, you, the said marshal, are hereby commanded to cause the said seven hundred and eighty-eight bales and fifty-two sacks of cotton to be sold, in manner and form, upon the notice, and at the time and place required by law, and that you deposit the money arising from such sale with the assistant treasurer of the United States at St. Louis; and have you a certificate thereof, together with a return of your proceedings hereon, in said court at Springfield, in said district, on the second Monday of June, in the year of our Lord one thousand eight hundred and sixty-four, and have you also then and there this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

[L. S.] GEO. P. BOWEN, *Clerk.*

27 *Notice of sale.—United States marshal's sale in admiralty.*

By virtue of a writ of sale issued out of the United States district court for the southern district of Illinois, in admiralty, dated on the 23d day of May, A. D. 1864, will be sold at public sale to the highest and best bidder for cash, at Cairo, in said district, on the 8th day of June, A. D. 1864, the following described property, to wit: seven hundred and eighty-eight bales and fifty-two sacks of cotton, ordered by the court to be sold for the benefit of whom it may concern,

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, Ill's, May 23, 1864.

Certificate of publication.

The undersigned, publisher of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for ten days successively, the first publication thereof having been made on the 24th day of May, A. D. 1864, and the last on the 4th day of June, A. D. 1864.

28 Illinois State Register Printing Co., publishers Illinois State Register, per— D. O. C.

Filed June 21st, 1864.

GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I sold, on the 8th day of June, A. D. 1864, the within described property, for the sum of three hundred twenty-one thousand eight hundred and twenty-four and $\frac{19}{100}$ dollars, and have deposited the same with the assistant United States treasurer at St. Louis, the certified copy of which deposit I now return with this writ.

D. L. PHILLIPS, *U. S. Marshal.*

Filed June 21st, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Certificate of deposit.

$321,824 19. OFFICE OF ASSISTANT TREASURER U. S.,
St. Louis, Mo., June 18, 1864.

I certify that D. L. Phillips, U. S. marshal for the southern
29 district of Illinois, has this day deposited to the credit of the district court of the United States for said district, in the case of the United States *vs.* 788 bales and 52 sacks of cotton, three hundred and twenty-one thousand eight hundred and twenty-four and $\frac{19}{100}$ dollars, proceeds of sale in said cause.

(Original.) BEN FARRAR, *Assistant Treasurer.*

Filed June 21st, 1864.

GEO. P. BOWEN, *Clerk.*

On the said twenty-first day of May, in the year last aforesaid, the said Lawrence Weldon, district attorney of the United States for said district, also filed in the office of the clerk of said court a libel in behalf of the United States and all others concerned, against four hundred and nine bales and one hundred and thirty-nine sacks of cotton, in a cause of prize, which said libel is in the words and figures following, to wit:

Libel.

District court.—In prize.

UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

30 Be it remembered that, on the 21st day of May, A. D. 1864, before the Hon. Samuel H. Treat, judge of said court, comes Lawrence Weldon, district attorney for the United States for said district, in the name and behalf of the United States and of all other persons concerned, propounds and gives the said judge to understand and be informed that on or about the 1st day of April, A. D. 1864, on waters navigable to the sea by vessels of ten or more tons burden, or on lands adjacent thereto, the navy of the United States did seize as lawful prize of war the following, to wit, four hundred and nine bales and one hundred and thirty-nine sacks of cotton, which are now at the port of Cairo, and within the jurisdiction of this court. The said attorney alleges that all and singular

the premises are true and within the prize jurisdiction of this court, and that all of the said property so captured is lawful prize of war. Wherefore the said attorney prays that process of attachment may issue against said property, and the monition of this honorable court in that behalf to be made, and that all persons interested in
31 said property may be cited to appear and answer all and singular the allegations of this libel; and all due proceedings being had, your honor will adjudge and decree a condemnation of said property as prize of war, and that the proceeds thereof may be distributed according to law.

L. WELDON, *U. S. Att'y.*

Filed May 21st, 1864.

GEO. P. BOWEN, *Clerk.*

Whereupon the following proceedings were had in said court in said cause, and entered of record, to wit:

Order for process.

THE UNITED STATES
vs.
409 BALES and 139 SACKS COTTON. } In prize.

It is ordered by the court that a writ of monition issue in this cause, returnable on the second Monday of June next.

And thereupon a writ of attachment and monition was issued
32 against said property, directed to the marshal of the southern district of Illinois to execute, and was afterwards, to wit, on the twenty-third day of May, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto, are in the words and figures following, to wit:

Attachment and monition.

THE UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*
The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of Illinois, on the twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four, by L. Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons concerned, against four hundred and nine bales and one hundred and thirty-nine sacks of cotton, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons hav-
33 ing or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would

be pleased to pronounce for the condemnation thereof as lawful prize of war: You are, therefore, commanded to attach the said four hundred and nine bales and one hundred and thirty-nine sacks of cotton, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publicatien in the Illinois State Register for fourteen days previous to the day of trial of such seizure and libel to all persons claiming the said four hundred and nine bales and one hundred and thirty-nine sacks of cotton, or knowing or having anything to say why this court should not pronounce against the same according to the prayer of said libel; and that they be and appear before the said court to be held in and for the southern district of Illinois, at the United States court-room in the city of Springfield, in said distsict, on the second Monday in June next, if that be a day of jurisdiction, if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to
34 make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return, together with the writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this twenty-first day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

[L. S.] GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I have attached and seized the within described property, and made due proclamation thereof, and as said property is perishable and liable to be destroyed, I respectfully recommend its sale pending proceedings, on the 23d day of May, 1864.

D. L. PHILLIPS, *U. S. Marshal.*

Filed this 23d day of May, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Notice of libel and seizure.

UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

35 Whereas, on the 21st day of May, A. D. 1864, L. Weldon, United States district attorney, filed a libel in the district court of the United States for the southern district of Illinois, against 409 bales and 139 sacks of cotton, in a cause of condemnation and forfeiture; and whereas, by virtue of process in due form of law to me directed, returnable on the second Monday in June next, I have seized upon and taken the said property, and have the same in my custody: Notice is hereby given that a district court of the United States will be held at the United States court-room in the city of Springfield, on the second Monday in June next, for the trial of the said premises, and the owner or owners, and all persons who have or

claim any interest, are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not pass as prayed.

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, Ill., May 23, 1864.

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that
36 the annexed notice was published in said paper for fourteen days successively, the first publication thereof having been made on the 24th day of May, A. D. 1864, and the last on the 8th day of June, A. D. 1864.

Illinois State Register Printing Co., publishers Illinois State Register, per— D. O. C.

Filed June 13th 1864.

GEO. P. BOWEN, *Clerk.*

On the said twenty-third day of May, in the year last aforesaid, the following further proceedings were had in said court, and entered of record, to wit:

Order of sale pendente lite.

THE UNITED STATES
vs.
409 BALES and 139 SACKS OF COTTON. } In prize.

It appearing to the court, from the return of the marshal to the writ of monition issued in this cause, that he has attached the said four hundred and nine bales and one hundred and thirty-nine sacks of cotton, and that the same is perishable and liable to be destroyed, it is thereupon ordered by the court that the said property
37 be sold by the marshal, under and by virtue of a writ of venditioni exponas, to be issued by the clerk of this court in accordance with the rules and practice of the court, and that upon making such sale the marshal deposit the proceeds thereof with the assistant treasurer of the United States at St. Louis, subject to the order of the court.

It is further ordered that said writ be made returnable on the second Monday of June next, and that the said marshal give notice of said sale by publication in the newspaper designated by the court, and also in one or more newspapers published in the cities of Chicago, St. Louis, Cincinnati, and Cario.

And thereupon a writ of venditioni exponas was issued, directed to the marshal of said district to execute, and was after , to wit, on the twenty-first day of June, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto and the certificate of deposit filed therewith, are in the words and figures following, to wit:

38 *Venditioni exponas.*

THE UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel was filed in the district court of the United States for the southern district of Illinois, on the twenty-first day of May, in the year of your Lord one thousand eight hundred and sixty-four, by L. Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons concerned, against four hundred and nine bales and one hundred and thirty-nine sacks of cotton, praying that the same may be condemned and sold for the causes in said libel alleged; and whereas the said four hundred and nine bales and one hundred and thirty-nine sacks of cotton has been attached, by process issued out of said district court, in pursuance of the said libel, and is now in custody by virtue thereof, and such proceedings have been thereupon had that, by the decree of said court in this cause made on the twenty-third
39 day of May, in the year of our Lord one thousand eight hundred and sixty-four, the said four hundred and nine bales and one hundred and thirty-nine sacks of cotton was ordered to be sold by you, the said marshal, after giving ten days' notice of such sale, according to law: Therefore you, the said marshal, are hereby commanded to cause the said four hundred and nine bales and one hundred thirty-nine sacks of cotton to be sold, in manner and form, upon the notice, and at the time and place required by law, and that you deposit the money arising from such sale with the assistant treasurer of the United States at St. Louis; and have you a certificate thereof, together with a return of your proceedings hereon, in said court, at Springfield, in said district, on the second Monday of June, in the year of our Lord one thousand eight hundred and sixty-four, and have you also then and there this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

[L. S.] GEO. P. BOWEN, *Clerk.*

40 *Notice of sale.—United States marshal's sale in admiralty.*

By virtue of a writ of sale issued out of the United States district court for the southern district of Illinois, in admiralty, dated on the 23d day of May, A. D. 1864, will be sold at public sale to the highest and best bidder for cash, at Cairo, in said district, on the 8th day of June, A. D. 1864, the following described property, to wit, four hundred and nine bales and 139 sacks of cotton, the same having been ordered by the court to be sold for the benefit of whom it may concern.

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, Ills., May 23, 1864.

Certificate of publication.

41 The undersigned, publisher of the Illinois State Register, a newspaper publised at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for ten days successively, the first publication thereof having been made on 24th day of May, A. D. 1864, and the last on the 4th day of June, A. D. 1864.

Illinois State Reg. Printing Co., publishers Illinois State Register, per— D. O. C.

Filed June 21, 1864.

GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I sold, on the 8th day of June, A. D. 1864, the within described property, for the sum of one hundred seventy-six thousand nine hundred and fifty-eight and $\frac{36}{100}$ dollars, and have deposited the same with the assistant United States treasurer
42 at St. Louis, the certificate of which deposit I now return with this writ.

D. L. PHILLIPS, *U. S. Marshal.*

Filed June 21st, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Certificate of deposit.

$176,958 36. OFFICE OF ASSISTANT TREASURER U. S.,
St. Louis, Mo., June 18, 1864.

I certify that D. L. Phillips, U. S. marshal for the southern district of Illinois, has this day deposited to the credit of the district court of the United States for said district, in the case of the United States *vs.* 409 bales and 139 sacks of cotton, one hundred and seventy-six thousand nine hundred and fifty-eight and $\frac{36}{100}$ dollars, proceeds of sale in said cause.

(Original.) BEN. FARRAR, *Assistant Treasurer.*

Filed June 21st, 1864.

GEO. P. BOWEN, *Clerk.*

On the third day of June, in the year last aforesaid, came again the said Lawrence Weldon, district attorney of the United
43 States for said district, and filed in the office of the clerk of said court a libel in behalf of the United States and all others concerned, against one thousand bales of cotton, in a cause of prize, which said libel is in the words and figures following, to wit:

Libel.

District court.—In prize.

UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

Be it remembered that, on the third day of June, A. D. 1864, before the Hon. Samuel H. Treat, judge of the said court, comes Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all other persons concerned, propounds and gives the said judge to understand and be informed that on or about the 20th day of May, A. D. 1864, on waters navigable to the sea by vessels of ten or more tons burden, or on lands adjacent thereto, the navy of the United States did seize
as lawful prize of war the following, to wit, 1,000 bales cotton
44 which are now at the port of Cairo, and within the jurisdiction of this court.

The said attorney alleges that all and singular the premises are true, and within the prize jurisdiction of this court, and that all of the said property so captured is lawful prize of war.

Wherefore the said attorney prays that process of attachment may issue against said property, and the monition of this honorable court in that behalf to be made, and that all persons interested in said property may be cited to appear and answer all and singular the allegations of this libel, and, all due proceedings being had, your honor will adjudge and decree a condemnation of said property as prize of war, and that the proceeds thereof may be distributed according to law.

L. WELDON, *U. S. Att'y.*

Filed, June 3d, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Whereupon the following proceedings were had in said court in said cause, and entered of record, to wit:

45 *Order for process.*

THE UNITED STATES
vs.
1,000 BALES OF COTTON. } In prize.

It is ordered by the court that a writ of monition issue in this cause, returnable on the third Monday of June instant.

And thereupon a writ of attachment and monition was issued against said property, directed to the marshal of the southern district of Illinois to execute, and was afterwards, to wit, on the fourth day of June, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto, are in the words and figures following, to wit:

Attachment and monition.

THE UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

The United States of America to the marshal of the southern
45½ district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of Illinois, on the third day of June, in the year of our Lord one thousand eight hundred and sixty-four, by Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all others concerned, against one thousand bales of cotton, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the condemnation thereof as lawful prize of war: You are, therefore, commanded to attach the said one thousand bales of cotton, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publication in the Illinois State Register for fourteen days previous to the day of trial, of such seizure and libel, to all per-
46 sons claiming the said one thousand bales of cotton, or knowing or having anything to say why this court should not pronounce against the same according to the prayer of said libel; and that they be and appear before the said court, to be held in and for the southern district of Illinois, at the United States court-room in the city of Springfield, in said district, on the third Monday in June, instant, if that be a day of jurisdiction, if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return, together with this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this third day of June, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

[L. S.] GEO. P. BOWEN, *Clerk.*

Marshal's return.

47 By virtue of this writ I have, this 4th day of June, 1864, attached the within described property, and made publication thereof, and as said cotton is perishable and liable to be destroyed, I respectfully recommend its sale pending proceedings against the same.

D. L. PHILLIPS, *U. S. Marshal.*

Filed this 4th day of June, 1864.

GEO. W. BOWEN, *Clerk.*

Notice of libel and seizure.

UNITED STATES OF AMERICA, *Southern district of Illinois, ss :*

Whereas, on the third day of June, A. D. 1864, L. Weldon, United States district attorney, filed a libel in the district court of the United States for the southern district of Illinois, against 1,000 bales cotton, in a cause of condemnation and forfeiture; and whereas, by virtue of process in due form of law to me directed, returnable on the third Monday in June inst., I have seized upon and taken the said property, and have the same in my custody—

Notice is hereby given that a district court of the United States will be held at the United States court-room, in the city of Spring-
48 field, on the third Monday in June inst., for the trial of the said premises, and the owner or owners, and all persons who have or claim any interest, are hereby cited to be and appear at the time and place aforesaid, to show cause, if any they have, why a final decree should not pass as prayed.

D. L. PHILLIPS, *U. S. Marshal.*

Springfield, Ill., June 4, 1864.

Certificate of publication.

The undersigned, publishers of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was published in said paper for fourteen days successively, the first publication thereof having been made on the 5th day of June, A. D. 1864.

Illinois State Register Printing Co., publishers Illinois State Register, per— D. O. CROWLEY.

Filed June 20th, 1864.

GEO. P. BOWEN, *Clerk.*

49 On the said fourth day of June, in the year last aforesaid, the following proceedings were had in said court in said cause, and entered of record, to wit:

Order of sale pendente lite.

THE UNITED STATES
v.
1,000 BALES OF COTTON. } In prize.

It appearing to the court, from the return of the marshal to the writ of monition issued in this cause, that he has attached the said one thousand bales of cotton, and that the same is perishable and liable to be destroyed, it is thereupon ordered by the court that the said property be sold by the marshal, under and by virtue of a writ of venditioni exponas to be issued by the clerk of this court in accordance with the rules and practice of the court, and that upon making such sale the marshal deposit the proceeds thereof with the

assistant treasurer of the United States at St. Louis, subject to the order of the court.

It is further ordered that said writ be made returnable on
50 the fourth Monday of June instant, and that the marshal give notice of said sale by publication in the newspaper designated by the court, and also in one or more newspapers published in the cities of Chicago, St. Louis, Cincinnati, and Cairo.

And thereupon a writ of venditioni exponas was issued, directed to the marshal of said district, to execute, and was afterwards, to wit, on the twenty-ninth day of July, in the year last aforesaid, returned by said marshal duly executed, which said writ, together with the return of the marshal thereto and the certificate of deposit filed therewith, are in the words and figures following to wit:

Venditioni exponas.

THE UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas a libel was filed in the district court of the United States for the southern district of Illinois, on the 3d day of June, in
51 the year of our Lord one thousand eight hundred and sixty-four, by Lawrence Weldon, district attorney of the United States for said district, in the name and behalf of the United States and of all others concerned, against one thousand bales of cotton, praying the same may be condemned and sold for the causes in said libel alleged; and whereas the said one thousand bales of cotton has been attached by process issued out of said district court, in pursuance of the said libel, and is now in custody by virtue thereof, and such proceedings have been thereupon had that by the decree of said court in this cause made on the fourth day of June, in the year of our Lord one thousand eight hundred and sixty-four, the said one thousand bales of cotton was ordered to be sold by you, the said marshal, after giving ten days' notice of such sale according to law:

Therefore you, the said marshal, are hereby commanded to cause said one thousand bales of cotton to be sold in manner and form, upon the notice, and at the time and place required by law, and that you deposit the money arising from such sale with the assistant
52 treasurer of the United States at St. Louis; and have you a certificate thereof, together with a return of your proceedings herein, in said court at Springfield, in said district, on the fourth Monday of June, in the year of our Lord one thousand eight hundred and sixty-four, and have you also then and there this writ.

Witness the Hon. Samuel H. Treat, judge of our said court, this fourth day of June, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth.

[L. S.] GEO. P. BOWEN, *Clerk.*

Notice of sale.—United States marshal's sale in admiralty.

By virtue of a writ of sale issued out of the United States district court for the southern district of Illinois, in admiralty, dated on the 4th day of June, A. D. 1864, will be sold at public sale to the highest and best bidder for cash, at Cairo, in said district, on the 22d day of June, A. D. 1865, the following described property, to wit,
53 one thousand bales of cotton, the same having been ordered by the court to be sold for the benefit of whom it may concern.

D. L. PHILIPS, *U. S. Marshal.*

Springfield, Ill's, June 6th, 1864.

Certificate of publication.

The undersigned, publisher of the Illinois State Register, a newspaper published at Springfield, Illinois, do hereby certify that the annexed notice was publisher in said paper for ten days successively, the first publication thereof having been made on the 7th day of June, A. D. 1864, and the last on the 18th day of June, A. D. 1864.

Illinois State Register Printing Co., publisher Illinois State Register, per— D. O. CROWLEY.

Filed July 29th, 1864.

GEO. P. BOWEN, *Clerk.*

Marshal's return.

By virtue of this writ I sold, on the 22d day of June, A. D. 1864, the within described cotton, for the sum of four hundred forty-
54 seven thousand four and $\frac{96}{100}$ dollars, and have deposited the same with the assistant U. S. treasurer at St. Louis, Mo., the certificate of which deposit is herewith returned, July 28th, 1864.

D. L. PHILLIPS, *U. S. Marshal.*

Filed July 29th, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Certificate of deposit.

$447,004 96 OFFICE OF ASSISTANT TREASURER U. S.,
St. Louis, Mo., July 27, 1864.

I certify that D. L. Phillips, U. S. marshal for the southern district of Illinois, has this day deposited to the credit of the district court of the United States for said district, in the case of the United States *vs.* one thousand bales of cotton, four hundred forty-seven thousand and four $\frac{96}{100}$ dollars proceeds of sale in said cause.

(Original.) H. H. WERNSE,
Act'g Assistant Treasurer.

Filed July 29th, 1864.

GEO. P. BOWEN, *Clerk.*

On the seventh day of June, in the year last aforesaid, the
55 following proceedings were had in said court and entered of record, to wit:

Motion to consolidate causes.

THE UNITED STATES
vs.
650 BALES COTTON, &c.

THE UNITED STATES
vs.
788 BALES and 52 SACKS COTTON.

THE UNITED STATES
vs.
409 BALES and 139 SACKS COTTON.

THE UNITED STATES
vs.
1,000 BALES OF COTTON.

Now comes Messrs. Edwards & Brown, Hay & Cullom, proctors for Cornelius Voorhies *et al.*, and enter their motion to consolidate the above-entitled causes.

And afterwards, to wit, on the fourteenth day of June, in the year last aforesaid, the following further proceedings were had in said cause and entered of record, to wit:

Order of consolidation.

THE UNITED STATES
vs.
650 BALES COTTON, &c.

THE UNITED STATES
vs.
409 BALES and 139 SACKS COTTON.

56 THE UNITED STATES
vs.
788 BALES and 52 SACKS COTTON.

THE UNITED STATES
vs.
1,000 BALES OF COTTON.

The court having fully considered, and being now sufficient advised upon the motion heretofore entered by Messrs. Edwards & Brown, Hay & Cullom, proctors for Cornelius Voorhies and others, to consolidate the above-entitled causes, it is ordered and decreed that said motion be sustained, and the said causes be consolidated.

And afterwards, to wit, on the sixteenth day of June, in the year last aforesaid, the following proceedings were had in said court and entered of record, to wit:

Order for proof.

It is ordered by the court that either party to any prize case pending in this court have leave to take depositions therein upon commission, or upon giving the adverse party legal notice of the time and place of taking the same.

57 And afterwards, to wit, on the eighteenth day of June, in the year last aforesaid, came Wellington W. Withenbury and Ross W. Doyle, claimants of nine hundred and thirty-five bales of the cotton libelled herein, by William H. Herndon, esq., and Richard M. Corwine, esq., their proctors, and filed in the office of the clerk of said court their claim and answer in said entitled cause, which said claim and answer are in the words and figures following, to wit:

Claim of Withenbury and Doyle.

In the district court of said United States in and for said district.

UNITED STATES OF AMERICA, libellant,
vs.
Against ONE THOUSAND BALES OF COTTON, consolidated of 650, 788, 409, and 1,000 ditto.

UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

58 To the honorable S. H. Treat, judge of the district court aforesaid:

The claim of Withenbury & Doyle made in the above-entitled cause, as follows:

They say, 1st. That the claimants, said Winthenbury & Doyle, are the only true and bona fide owners of 935 bales of the above cotton, consolidated case, and that no other person or persons are the owners of said nine hundred and thirty-five bales of the said cotton.

2d. That said claimants are residents of Louisiana and city of New Orleans, or one of the claimants is thus a resident, and the other of Cincinnati, Ohio.

Wherefore said claimants pray that said nine hundred and thirty-five bales of cotton, or the proceeds thereof, according to the orders and rules of court may be given over or delivered to them, or distributed or delivered to them according to the laws and the practice and rules of this court, &c.

WITHENBURY & DOYLE, *Claimants.*

Sworn to before me, by W. W. Withenbury and Ross W. Doyle, this 18th day of June, A. D. 1864.

GEORGE P. BOWEN, *Clerk.*

Filed June 18th, 1864.

GEORGE P. BOWEN, *Clerk.*

59 *Answer of Withenbury & Doyle.*

U. S. district c't, southern dis. of Illinois.

UNITED STATES OF AMERICA, *Southern district of Illinois:*

The claimants, Withenbury & Doyle, the owners and claimants of nine hundred and thirty-five bales of cotton, consolidated of 650, 788, 409, 1,000, to the libel of Lawrence Weldon, district att'y, in behalf of the United States of America, as well as all other persons interested or concerned against said cotton, consolidated as aforesaid, the said 935 being a part of the (1,000) one thousand bales.

And now comes said claimants, Winthenbury & Doyle, by their attorney, owners and claimants aforesaid and as above-mentioned, and for answer to said libel say, doth allege, and propound as follows, to wit:

1st. That the claimants are the only true, lawful, and bona fide owners of said 935 bales cotton, part and parcel of said consolidated case as aforesaid, and that no other persons are the owners of the same or any part thereof.

60 2d. That it is true that said cotton is libelled, and was seized on Washetaw river, in the State of Louisiana, on or about the 1st or 10th April, A. D. 1864, by the navy of the United States, substantially as alleged in said libel; but these claimants say that said 935 bales of cotton, nor any part thereof, were subject to seizure as lawful prize of war, nor was subject to seizure or condemnation nor libel of the U. S. A., nor were seized in waters navigable to the sea by vessels of ten or more tons burden; and, on the contrary, these claimants and respondents say and allege that said cotton as aforesaid, to wit, the 935 bales aforesaid, were seized by individuals of the navy at least one and a half miles from said Washetaw river, in the State aforesaid, on the plantation, place, or farm of Doct. Simmons, stored away safely and carefully, and subject to the orders of these respondents and claimants.

These claimants and respondents say that they purchased said cotton of the true, lawful, and bona fide owners of said cotton, and that they have a legal and lawful bill of sale therefor; that said cotton was duly sold and delivered to these claimants and respond-

61 ents on and at said plantation, near the Washetaw river, in said State of Louisiana, and which said sale and delivery were on the 6th day of Jan'y, A. D. 1864.

Third. These respondents say that one of the firm, Wellington Withenbury, is a citizen of Cincinnati and State of Ohio, and resident of the same; and that Ross W. Doyle, the other claimant, is a resident and citizen of the city of New Orleans and State of Louisiana, and that they have never voluntarily done anything against the United States of America, and are lawful citizens of said U. S. A., and loyal ones.

Wherefore these claimants in person pray this honorable court to adjudge and pronounce against the demand and libel, and all other

claimants in their aforesaid libel and claim and demands, as claimed and set forth in this case of libel and answer and response as to said 935 bales of said cotton as aforesaid, in said consolidated lots of 650, 788, 409, and 1,000, and that said 935 bales of cotton, or the proceeds thereof, if said cotton has or shall be sold according to law, and the orders and rules of this court. Wherefore, &c., &c., &c.

62 WITHENBURY & DOYLE, *Claimants.*

Sworn to before me by W. W. Withenbury and Ross W. Doyle this 18th day of June, A. D. 1864.

GEORGE P. BOWEN, *Clerk.*

Filed June 18th, 1864.

GEORGE P. BOWEN, *Clerk.*

And afterwards, to wit, on the twenty-fourth day of December, in the year last aforesaid, came again the said claimants, by their said proctors, and filed in the office of the clerk of said court their additional statements and affidavits in said entitled cause, which said additional statements and affidavits are in the words and figures following, to wit:

Additional statement and affidavit of W. W. Withenbury.

In the district court of the United States for the southern district of Illinois, in prize.

63 THE UNITED STATES
vs.
650 BALES OF COTTON, &c., 788 BALES OF COTTON, &c., 409 bales of cotton, &c., 1,000 bales of cotton.

Additional statement of W. W. Withenbury.

My residence has been in Cincinnati since the year 1838, and my business has been that of steamboating since 1840. Every winter, since 1841, I have spent in the south. I have built and owned several steamboats which I have run exclusively on the Red river, and in so long an acquaintance with that river I have become an expert pilot. My acquaintance with the people in that region has also been very general. At the beginning of the present rebellion, I was at N. Orleans, having then the steamer Homer. Running to Red river and finding it impossible to get out of the so-called "southern confederacy" with my boat, I continued to run on Red river, striving to do the best I could to make a living and support my family. When the news of the capture, by the U. S. forces, of New Orleans reached me I was at the town of Minden, Louisiana, a distance of 700 miles from New Orleans. The citizens of Minden and of the adjoining country suspected that I would be trying to get to New Orleans with my boat, and they warned me publicly not to attempt it, but to lay my boat up in Lake Bistenau, where she then was; but I managed to get away,

64 and while making my way out of the lake to Red river they

organized a party of thirty or forty men on horses to head me at Couchatta Point, on Red river, but I got beyond the point before they arrived. Just below Couchatta Point I commenced meeting steamboats which had run away from New Orleans and the Yankees. I was hailed by every one of them and told "to turn back," that "the Yankees had taken New Orleans," &c. I kept on, however, determined to make my escape out of Red river if possible. I arrived at the "head of the falls" three miles above Alexandria, at midnight, landed my boat, and sent my clerk, George R. Remer, with a few trusty men in the yawl to reconnoitre the town, and ascertain if I could pass the place without being seen. Their yawl was taken away from them, and they returned to me by land with the information that it would be impossible for me to elude the vigilance of the people at Alexandria, as they were all in a state of intense excitement.

Accordingly I proceeded to the town, landed there about daylight, when my boat was boarded by an armed mob of about a dozen men, who notified me not to leave the town "without permission of
65 the military authorities." After two days parleying, I got a permit to go as far down the river as Gorton's Landing (now Fort De Russy.) I now fully expected to make my escape to the Mississippi river, and thence to New Orleans without any difficulty having recently received a letter from my friend Dr. Edward Ames, of New Orleans, directing me to hoist the white flag as soon as I was out of the rebel lines. On reaching Gordon's Landing I found the river blockaded by a musket battery of about forty men. They hailed me and I landed and used all my powers of persuasion with the rebels to be allowed to go five miles further down the river under the pretext of getting wood, hoping thus to escape. They permitted me to go, but sent two armed men as guards. I immediately set to work trying to bribe these two men, and thought I had succeeded, when, on arriving at the wood yard, I found myself headed again, the balance of the battery having arrived there by land. Having failed in this effort, I gave it up and returned to Alexandria, where I went to work carrying freight and passengers from that point to points above, doing the best I could and watching for an opportunity to get
66 away. Soon the military operations began to require all kinds of transportion by river and land; and I had no alternative but to do my part seemingly with cheerfulness. On one occasion, however, I had a difficulty with a quartermaster by the name of T. R. Heard about the amount of my pay, and I refused to obey his orders unless more prompt payment was made. He threatened to have me put in irons, and my boat taken from me, and he told me he had General Taylor's order for so doing. This quieted me for a while; I preferred keeping charge of my own boat, so I concluded to obey orders. In the winter of 1863, I was sent to Vicksburg with a full load of government property consigned to the q. master, who then loaded me partly with some two hundred bales of coarse cotton goods for corn sacks and sent me to bayou Macon for a load of corn. I objected going there as I had no knowledge of that stream and not

like to risk my boat in strange places. The q. master insisted on my going and put an officer, Major S. D. Oliver, on board to see that I obeyed orders. I got no pay at Vicksburg for the freight carried there, for before I could get back the U. S. gunboat Queen
67 of the West had passed Vicksburg and I was ordered to Camden, Ark., with my load of corn, and from Camden the Q. M. then ordered me back to Bayou Macon for another load; and in this way I was at work, sometimes carrying corn, sometimes soldiers, sometimes cotton, and every variety of service which was required. My personal friend, Major Andrew W. McKee, formerly from Ohio, was in charge of an extensive beef packery belonging to the rebels in the fall of 1862, and after that was abandoned, he was appointed general agent for the purchase of cotton for the Confederate States. I took counsel of him, and he advised me to keep quiet and not to quarrel with Q. masters about money matters, as the money would be of little use to me except to pay current expenses; he at the same time assuring me that he would have authority from the Secretary of the Treasury to pay such claims as mine in cotton. I took his advice and after I had left my boat and barge, in the spring of 1863, on the Ouachita river above Monroe, La., I accepted employment in his cotton department, by this means keeping clear of serving in the militia as my age did not exempt me from that branch of the service either in Louisiana or Texas.
68 In the spring of 1863 when Gen'l Banks approached Alexandria for the first time, I was some miles away from that town but I hastened to meet him, when I was introduced to him as a reliable Union man. I had a long talk with him, giving him some valuable information.

I also met there Admiral Porter; went voluntarily on his flag-ship, Benton; told all I knew about the river, and offered to go with him up the river if he should go higher, and to aid him in any way in my power.

When I learned the probability that the expedition would return to the Mississippi river to aid in the capture of Port Hudson and Vicksburg, I went to General Banks and Admiral Porter, and explained to them, more particularly to General Banks, my situation, representing that I had a great many debts due me in the country, both from the citizens and the "confederacy," besides a good many bales of cotton, and finally that nearly all I possessed in the world was then within the rebel lines, and I asked to be permitted to go to Shreveport before the confederates should learn that I had proffered my services
69 to the United States forces, for if they once learned that, all would be lost, and my family was entirely dependent upon these fruits of many years of hard labor for their comforts. At the interview with General Banks, I met an old friend from New Orleans, Dr. H. Kennedy, who vouched for me as a loyal citizen of the U. S., upon which General Banks gave a pass to "go through the lines," and he advised me to make the best use of my time in getting together my effects, and be sure to meet him on his return. All this I promised him I would do. I then went to see Admiral Porter again,

and he coincided with my plans, and advised me to remain in the country until the U. S. army and navy should return.

In December, 1863, I learned that another expedition was being organized for Red river. I immediately entered into an arrangement with my friend Capt. R. W. Doyle, whose affairs were fixed very much like my own, by which we joined our fortunes together, with a hope of getting safely out of the country, and saving something of our earnings. Major McKee made partial settlements with us by transferring to us jointly several lots of C. S. A. cotton, among
70 which was that particular lot marked Tatum & Simons, C. S. A., and Simmons, C. S. A., which was raised by Dr. J. T. Simmons on his plantation, and by him sold to the confederate government, and for which he received his pay in confederate bonds. McKee gave us a bill of sale for the above described cotton, (935) nine hundred and thirty-five bales, and also drew an order on Simmons, requiring him to deliver it to us. The bill of sale is appended to the deposition of Milton M. Rhorer, taken in our behalf at Louisville, Ky., about the 14th December, 1864, and on file in this case; said bill of sale being dated at the office of the cotton agency at Alexandria, January 6th, 1864. After Doyle and myself had made the settlements above alluded to with A. W. McKee, and had received from him the bills of sale and orders for the delivery to us of the cotton, Doyle went to New Orleans and got Gen'l Banks's permit to bring the cotton to New Orleans on U. S. transports. He returned to Alexandria with Gen'l Banks, on the U. S. transport Black Hawk, Gen'l Banks's headquarters. I met Admiral Porter and Gen'l Banks on their arrival at Alexandria, in March, 1864, and renewed
71 my offer of services as pilot, which Admiral Porter immediately accepted, and I remained thus employed until about the time when the whole expedition was about to leave the Red river country. Admiral Porter and Gen'l Banks both advised me to go, as I had taken so prominent a part in aiding the U. S. forces, that "I must not be caught by the rebels." During the stay of the fleet of gunboats at Alexandria, a number of them were sent to the Ouachita river, and I learned that they had taken all the cotton off from the "Simmons" plantation, and sent it to Cairo on barges and transports. I was told that the gunboat No. 14 had taken the Simmons cotton, and as she afterwards returned to Alexandria, I went on board and asked the captain if he took the cotton from Simmons's plantation, and he told me had taken seven or eight hundred bales, but that it was marked C. S. A. I immediately went to Admiral Porter, and reported to him the taking of my cotton, and showed him the bill of sale before mentioned, and he then told me that if any of my cottom was taken, it should be returned to me. I reminded him that he had given me pro-
72 tection, and had also promised to assist me in saving my property. His reply was that no official report had yet been made to him of the Ouachita expedition, and until a report was made he could do nothing for me. I left the bill of sale with him, as he thought he would write me an order to Capt. Pennock at Cairo, to deliver me the cotton. When Gen'l Banks went from Alexandria to Grand Ecore,

I went as assistant pilot on the boat where he had his headquarters, the transport Black Hawk. I went at the request of Gen'l Banks, and by the permission of Admiral Porter. On the trip up and while at Grand Ecore, I made sketches of certain localities on the river for Gen'l Banks and Gen'l Stone, thus showing them were the rebels were placing obstructions, and on parting from them at Grand Ecore, at which point Gen'l Banks, with the army, left their transports and started for Shreveport by land, I gave Gen'l Stone my maps of Louisiana and Texas, which had served me in travelling over the route they were about to take. Gen'l Stone admitted that my
73 maps were of much service to him, as on them I had made several notes and corrections, the result of my own observations. I returned to Alexandria, where I reported to Capt. Breese, then in command of the naval forces left at Alexandria.

The last service I rendered the navy was to go over the falls with the transport Champion in the night, which was going to the wreck of the U. S. gunboat Eastport, then lying sunk below Grand Ecore. After the defeat of Gen'l Banks, the gunboats and transports returned to the head of the falls, where they were obliged to stop on account of low water, except a few of the light ones, and they came down to Alexandria. When Admiral Porter arrived on his flag-ship Cricket, from the wreck of the Eastport, I went on board to see him, and with him walked to Gen'l Banks's headquarters, and during the walk he advised me to leave Alexandria for the Union lines without delay, as the whole U. S. forces would leave as soon as his iron-clads could be brought over the falls; or in the event of failing to get them
74 over the falls they would be blown up. The next morning I asked Admiral Porter to give me some writing to the authorities of Cairo for my 935 bales of "Simmons" cotton, which I was satisfied had been taken from the plantation where it was stored, on the Ouachita river, and was already gone to Cairo. He wrote me a letter to Capt. Pennock, and promised to assist me in the matter himself, at Cairo, when he should arrive there.

Finally, on the morning of the 4th of May, 1864, I got Admiral Porter's pass and certificate for free transportation on the U. S. transport John Warner, to New Orleans, and I started on her after receiving back from Admiral Porter's hands the aforesaid bill of sale for the 935 bales of cotton. The John Warner was captured at a point 30 miles below Alexandria, on the morning of the 5th May. At the time of her capture she had on board some two hundred men of the 56th Ohio V. infantry, under command of Col. Raynor, who was wounded in the fight. The John Warner was convoyed by two gunboats, the Covington (No. 25) and Signal, (No. 8,) both of which were captured and destroyed, with the Warner.

Capt. R. W. Doyle was with me, and in his pocket he had
75 the bill of sale of the Simmons cotton, as I had given it to him but a moment after I received it from the hands of Admiral Porter just as we were starting from Alexandria, and he had no time to put it in his trunk with the rest of our papers. This circumstance will account for the aforesaid bill of sale not being lost with Capt.

Doyle's trunks. We made our escape from the rebels by the timely arrival from below of the gunboat No. 9, which frightened the rebels off as they were ferrying us across the river to their camp. I took to the woods, and after walking 12 or 15 miles came to the house of an old friend, Cornelius Voorhies, whom I knew to be a Union man, and while talking with him about the safest route to escape, the U. S. gunboat No. 9, Capt. Johnstone, hove in sight coming down, she having retreated from the rebel battery which had captured the Warner and her two convoys, before mentioned. The No. 9 took me on board, and I thus made my escape from rebeldom, after more than two years of captivity.

As soon as possible, I repaired to Cairo to look after my Simmons cotton. I found and identified by the mark "Tatum & Simmons," a great deal of the cotton then at Cairo, and the clerk in charge
76 reported to me over 500 bales of it which he said would be sold on the 22d of June. I called on Admiral Porter, on his flagship Black Hawk, then lying at Mound City, but he told me that before he had arrived from Red river, all the cotton had passed into the hands of the United States marshal, and it was out of his power to interfere in my behalf, and that I must intervene in the court, and that he hoped I would succeed and get the proceeds of it. The clerk at the cotton-yard at Cairo told me that Admiral Porter had allowed some parties to substitute 215 bales of the "Tatum & Simmons" cotton in place of another lot which had been sold previously as prize cotton, which two hundred and fifteen bales had been shipped to an eastern market and sold, but on this fact being made known to this court, an order was made directing the cotton to be returned, or if sold, the proceeds to be paid into this court, which I am informed was done, said proceeds to there remain to await the termination of this suit.

I hereto append original papers, numbered 1, 2, 3; No. 1 being a letter from Admiral David D. Porter, commanding Mississippi
77 squadron U. S. navy, to Capt. Pennock, naval capt. at Cairo, dated at Alexandria, May 4th, 1864; No. 2 being a pass written by Admiral Porter for Capt'n Martin and myself, stating that we were engaged in the Navy Department, dated Alexandria, April 1st, 1864, and countersigned by C. Grover, brig. gen'l, commanding; No. 3 being a certificate of my loyalty, and of services rendered by me, signed David D. Porter, rear admiral, and dated June 18, 1864. I have received various other papers from Admiral Porter, and also from General Banks, some of which are appended to depositions now on file in this case, and some of which were lost or destroyed on the John Warner, and others, which I had on my person, I destroyed for fear of being captured by the rebels, and my course towards the Union forces being thus exposed. I saw Admiral Porter write these three papers, and I also saw General Grover countersign the one bearing his signature. I also append paper No. 4, which is the oath of allegiance, administered to me at my own request, at Alexandria, on the 31st day of March, 1864, bearing the signature of M.
78 Benedict, lt., and dep. pro. marshal. I saw said M. Benedict fill up this paper, and sign his name thereto, a duplicate

of which he retained. I have never taken the oath of allegiance to the so-called southern confederacy, although I have been many times called up to do so. Neither have I ever, for a single moment in my life, entertained a sentiment in favor of the rebellion, nor have I ever rendered to the rebels any voluntary aid or service; but on the contrary, whenever I could, with safety to my life and liberty, I have manifested my opposition to it. I was at Alexandria at the time that a large lot of over five hundred bales of grey army cloth arrived there overland from Matamoras, Mexico, in charge of Wm. L. Sharkey, Capt. and A. Q. M. C. S. A. This was part of the same army cloth which I had heard of before as being furnished by the house of Ed. Gautherin & Co., of New Orleans. Said house is said to have been connected with the house of G. A. Le More & Co., at Havre, France. Capt. Sharkey, finding I had a barge suitable for low-water navigation, came to me to make arrangements for the transportation of said cloth to Vicksburg, and called to his aid Maj. Moise, a C. S.
79 Q. M., who ordered me peremptorily to prepare my barge for said transportation of cloth, as the river was too low for steamers to run. I append a certified copy of a letter written by John A. Stevenson to J. M. Lapeyre, esq., dated at Shreveport, May 28th, 1864. Lapeyre was then, and I believe now is, the president of the State Bank of Louisiana, through which Messrs. Grieff & Zunts assert a claim for cotton in this case, and John A. Stevenson, the writer of said letter, was at the date of the same, 28th May, 1864, and had been for a long time before, the agent of said bank in the confederate lines, for the purchase and management of all cotton belonging to said bank. The whole copy of the letter, hereto appended, is in the handwriting of J. M. Lapeyre. I suppose that the paragraph of the letter reading in these words, viz: "I have cancelled my trade with the parties out here, and have now charge of my original cotton," refers to a contract made by Stevenson as agent of said bank, with the rebel commander at Shreveport, E. Kirby Smith, and W. A. Broadwell, Smith's newly appointed "Chief of C. S. cotton bureau for the
80 trans-Mississippi department," by which the contracting parties exchanged cotton for mutual advantage, the bank having originally purchased cotton in places remote from the Mississippi river, traded with E. K. Smith and W. A. Broadwell, said original purchases for the Confederate States cotton, lying near the Mississippi, and at points easy of access from the Mississippi. The motive for this arrangement on the part of the confederates, was to prevent this cotton from falling into the hands of the federal army, which was every day approaching the country and streams where it was stored, and to get in exchange cotton from Stevenson, the agent of said bank, which could be easily transported overland to the Rio Grande.

I have seen the authorization of McKee to pay debts of the confederacy in confederate cotton, and being fully satisfied of the genuineness of his authority, I had no hesitation in receiving pay for all the confederacy owed me in cotton, particularly as they stipulated that I should take such cotton as they, the confederate military authorities, considered in exposed localities.

81 Captain Doyle and myself owned jointly at different points within the rebel lines, at the time the U. S. army and navy came up Red river in March, 1864, twenty-five hundred and sixty-one bales of cotton, and we had Gen'l N. P. Banks's permit to bring into New Orleans, on U. S. transports, twenty-five hundred bales. Said permit was signed by Col. L. B. Hollabird, chief Q. M. dep't of the gulf, and dated at New Orleans, January 30th, 1864, and was approved by Maj. Gen'l N. P. Banks, M. G. C. dep't of the gulf. The original of said contract or permit is now in the hands of Col. L. B. Hollabird, at New Orleans, La. By the unfortunate termination of the Red River expedition of 1864, we only succeeded in getting to the Union lines one hundred and ninety-seven bales.

WELLINGTON W. WITHENBURY.

Subscribed and sworn to before me this 21st day of December, A. D. 1864.

THEOPHILUS KEMPER,
U. S. Commissioner South. Dist of Ohio.

Exhibit No. 1.—*Letter of Admiral Porter.*

ALEXANDRIA, *May* 4, 1864.

DEAR SIR: Captains W. W. Withenbury and R. W. Doyle
82 are going to Cairo to prosecute some claim they have on some C. S. A. cotton. I know nothing whatever of the circumstances, but at Cap't Withenbury's request, give him this letter of introduction to you, and you will please inform him who the proper persons are to whom he must apply for information in relation to his affairs.

Yours, truly,

DAVID D. PORTER, *Rear-Admiral.*

Capt. PENNOCK, *Fleet Capt., Cairo.*

Exhibit No. 2.—*Pass given to Messrs. Withenbury and Martin.*

Messrs. Withenbury and Martin, engaged in the navy department, have permission to go to their plantations.

DAVID D. PORTER, *Rear-Admiral.*

Alexandria, April 1, 1864.

To go with 2 horses and buggy, and return to-day.

C. GROVER, *Brig. Gen'l, Com'd'g.*

Exhibit No. 3.—*Certificate of loyalty of W. W. Withenbury.*

83 This is to certify that I knew W. W. Withenbury at Alexandria, La.; that he was a loyal man, to the best of my knowledge, and did whatever service was required of him. He has claims about which I know nothing, but I know him to be a perfectly reliable man.

DAVID D. PORTER, *Rear-Admiral.*

June 18, 1864.

Exhibit No. 4.—Oath of allegiance of W. W. Withenbury.

I, W. W. Withenbury, do solemnly swear in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of the States thereunder, and that I will in like manner abide by and faithfully support all acts of Congress, passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court, and that I will in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, as long and so far as not modified or de-
84 clared void by decision of the Supreme Court. So help me God.

W. W. WITHENBURY.

RAPIDES PARISH, *State of Louisiana, ss:*

Sworn and subscribed before me this 31st day of March, 1864.

M. BENEDICT,
Lt. and Dep'y Pro. Mar.

Exhibit No. 5.—Copy of letter of John A. Stevenson.

[Copy.]

SHREVEPORT, *May 28th*, 1864.

J. M. Lapeyre, Esq.

DEAR SIR: I have written you several times, but my letters may not have reached you. I have been so exercised of late by events *of late*, that I hardly know what end I stand on. I have lost more by burning than I had first thought, perhaps 3,000 bales. I have cancelled my trade with the parties out here, and have now charge of my original cotton. I of course can do nothing but take care of it.

No cotton will be allowed to go out of these lines until the
85 war ends.

Permits are all cancelled. Had the authorities on your side acted promptly, the results would have been different.

(Signed) J. A. STEVENSON.

A true copy.

J. M. LAPERYE.

Filed Dec. 24th, 1864.

GEO. P. BOWEN, *Clerk.*

Additional statement of Ross W. Doyle.

In the district court of the U. S., southern district of Illinois, in prize.

THE UNITED STATES
vs.
650 BALES OF COTTON, &c., 788 BALES OF cotton, &c., 409 bales of cotton, &c., 1,000 bales of cotton, &c.

Additional statement.

Ross W. Doyle, one of the claimants, with Wellington W. Withenbury, of nine hundred and thirty-five bales of cotton in this case,

by way of additional statement, says that when the present rebellion in the cotton States broke out, he was engaged in his legitimate business of steamboating on Red river with his steamboat Vigo,
86 and that he was unable to get his boat or himself away from that country so as to return to those States of the United States where the flag of his country was recognized and respected; that he is a native of Steubenville, Ohio, which was then his home, but every effort which he made to get away from rebel rule failed. His boat was impressed into the rebel service, and he was compelled, under the severest military rule, to take charge of her and render services for that so-called government, or have his boat sacrificed and himself impressed into the army. At one time, in order to avoid the wholesale conscription, he was compelled to accept service in the cotton office of A. W. McKee as a clerk. He was in Texas when Banks's army first came to Alexandria, and did not get back to Red river until after Banks's army commenced falling back, so that he had no opportunity of availing himself of the protection of those troops to get out of the rebel lines.

He continued in this impressed service with the rebels until the 7th day of January, 1864, when he made his escape to New Orleans.

When Gen'l Banks' second expedition went to Red River, he
87 accompanied the expedition to Alexandria. He remained there until the time when the federal forces commenced falling back. Then, by permission of the military and naval authorities who knew his entire loyalty to his government, he took passage on the U. S. transport John Warner for New Orleans. Capt. Withenbury was also a passenger on the same boat.

About 30 miles below Alexandria the John Warner was captured by the rebels. She was shelled and kept under musket fire by the rebels, who had planted a battery at that point, and compelled her to land, but did so on the opposite side of the river to the one where the rebel battery was planted, and in the confusion that ensued he made his escape and finally got to New Orleans; but he lost his trunk containing many valuable papers, which, he supposes, was captured by the enemy with that boat. From the moment the rebellion broke out he determined to get away from that country, because he knew they were wrong and his own government was right. At no time did he ever lose his loyalty to his government, but remained its steadfast supporter.

88 For the various services rendered by myself and Capt'n Withenbury, mostly on joint account, the services of our boats being included, the so-called confederate government became indebted to said Withenbury and Doyle in a very large sum of money, and they were paid in part by a transfer of cotton belonging to that government. Among the lots transferred was the cotton called the Tatum & Simmons cotton, consisting of nine hundred and thirty-five bales then lying on the Ouachita river, at Simmons's plantation. That was sold and transferred to us on the 6th of January, 1864, as will be seen by a paper writing, signed A. W. McKee, cotton agent for Louisiana for C. S. A., attached to and made a part of Milton M.

Rhorer's deposition filed in this case. Mr. McKee also gave us an order on Simmons for the cotton, directing him to deliver it to us, Simmons being the custodian of the cotton for the confederate government, and having no further interest in it. He was fully paid for it in confederate government bonds, as I have often seen by entries on the books of the cotton agency at Alexandria while I was
89 clerking there, and as was well understood in the office by all persons connected with the agency.

That order was in the trunk which was captured on the John Warner aforesaid, and I have never seen it since. I may add that the bills of sale of all cotton sold to the confederate government, required the seller to take care of the cotton till called for by the purchaser or their assigns. I also add, that when I went to New Orleans in January, after fully representing to the parties the true state of our title to all this cotton, and other cotton owned by myself and Withenbury, in order that Gen'l Banks might understand our status in every respect, Gen. Banks gave me a permit to remove twenty-five hundred bales of cotton from the Red river and its tributaries, which included the Simmons cotton.

Major A. W. McKee referred to above was the agent of the so-called Confederate States for the purchase and preservation and disposal of cotton for that gov't. I had ample opportunities of knowing the power of said McKee, for I copied while in his office the
90 official correspondence with the confederate authorities at Richmond more particularly relating to this subject. When Gen. Kirby Smith undertook to create a new department after the fall of Vicksburg, he appointed a cotton agent, and there was likely to be some conflict of authority, Maj. McKee wrote to the Sec. of the Treasury at Richmond, asking for instructions. The Secretary replied that Maj. McKee would in all matters relative to the preservation, transportation or disposal of the cotton of the Confederate States in his department, of course first consult the nearest military authority; but he would in all cases use his own good judgment as heretofore, and his acts would be approved.

I know of many instances where Major McKee, as such agent, with the approbation of Gen'l Taylor, the nearest military commander, paid cotton for services rendered the government, bale for bale.

These facts and others gave him the amplest authority to dispose of cotton in the payment of the debts of the government owed to individuals. Hence his payment to Withenbury and Doyle in cotton, as before spoken of. Neither Withenbury or myself ever ren-
91 dered any service ourselves, or with our boats to said confederates, except under duress or the most stringent military orders. We were either compelled to render the service or lose our boats, and be ourselves impressed into the military service. That we had determined we would not do as long as we could help it, and we succeeded in avoiding the military service, and never did render any.

STATE OF OHIO, *Hamilton county, Southern district of the U. S. court:*

Personally came before me, F. Holliday, a United States commissioner appointed in said district to administer oaths, &c., Ross W. Doyle, who states that the matters and things set forth in the above statement are true, as he verily believes.

ROSS W. DOYLE.

Subscribed and sworn before me, this 16th day of December, A. D. 1864.

[L. S.] F. HOLLIDAY,
United States Commissioner, Southern Dis't, Ohio, Cincinnati, Ohio.

92 Filed Dec. 24, 1864.

GEO. P. BOWEN, *Clerk.*

And afterwards, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy-five, came again the said claimant, Ross W. Doyle, by his said proctor, and filed in the office of the clerk of said court his further additional statement in said entitled cause, which said further additional statement is in the words and figures following, to wit:

Additional statement of Ross W. Doyle.

Another and additional statement of Ross W. Doyle, one of the claimants with Wellington W. Withenbury, of nine hundred and thirty-five bales of cotton in this case.

By way of additional statement, said Doyle says that he was born in the town of Steubenville, State of Ohio, where he has hitherto always resided and maintained his lawful citizenship, never having been a citizen or resident or claimed to be of any other place
93 or State.

That he has for sixteen years been engaged in the steamboat business on the western and southwestern waters of the United States, in the winter, spring and fall months of each year, remaining in Ohio or the north in the summer months. That at the time the rebellion broke out he was engaged with his steamboat Vigo, regularly licensed by the United States authorities for that purpose, in carrying freight and passengers for hire on the southern waters, the lower Mississippi and its tributaries, just as he had been doing for many years before, intending as soon as the steamboat season was over to return with his boat to Ohio, as was his uniform custom, and would have done so the moment the rebellion broke out if the rebel authorities had not interfered and prevented him from leaving by force, which was the case every time he made an effort to leave with his boat.

R. W. DOYLE.

Signed my presence and sworn to before me, 31st day of January, A. D. 1865.

THEOPHILUS KEMPER,
U. S. Commissioner South Dis't of Ohio.

Filed Jan. 27th, 1865.

GEO. P. BOWEN, *Clerk.*

94 And afterwards, to wit, on the sixth day of March, in the year last aforesaid, the following proceedings were had in said court in said entitled cause, and entered of record, to wit:

Order as to depositions.

THE UNITED STATES
v.
650 BALES OF COTTON, &c., 788 BALES 52 sacks of cotton, 409 bales 139 sacks of cotton, and 1,000 bales of cotton. } In prize.

In this case it appearing that the claimants, Withenbury & Doyle, have taken in due form, before duly appointed United States commissioners de bene esse, the depositions of John M. Martin and Milton M. Rohrer. On motion of their counsel, it is ordered that said depositions be filed for use in this case; but any parties to these proceedings have the right to cross-examine said witnesses in any reasonable time before the final hearing of this cause, but their neglect to do so shall not operate to the prejudice of said Withenbury and Doyle; but notwithstanding such neglect said deposition may be read,
95 subject only to all just exceptions as to competency and relevancy; but no prejudice shall ensue to them because without special permission now first had from this court in that behalf. The court likewise orders that the additional and supplemental statements of Withenbury and Doyle be placed on file.

The district attorney and the counsel for captors, at the hearing of said cause, objected to the admission of the additional statements of Wellington W. Withenbury and Ross W. Doyle as a part of the record in said cause.

And afterwards, to wit, on the sixth day of November, in the November special term of said court, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

THE UNITED STATES
v.
SIX HUNDRED AND FIFTY BALES OF COTTON, &c., seven hundred and eighty-eight bales and fifty-two sacks of cotton, four hundred and nine bales and one hundred
96 and thirty-nine sacks of cotton, and one thousand bales of cotton. } In prize.

This cause having been heard upon the libels, the claim, and answer of Wellington W. Whitenbury and Ross W. Doyle, claimants of nine hundred and thirty-five bales of said cotton, and the proofs on file, and the court having considered and being now sufficiently advised in the premises, finds that the said claimants are not entitled to the said nine hundred and thirty-five bales of cotton or the proceeds thereof.

It is therefore ordered, adjudged, and decreed by the court that the said claim be dismissed at the costs of the claimants, and that execution issue therefor.

And now come the said claimants, Wellington W. Whitenbury and Ross W. Doyle, by R. M. Corwine, esq., their proctor, and pray an appeal to the Supreme Court of the United States. It is thereupon ordered by the court that an appeal be allowed said claimants upon their entering into bond in the penalty of two thousand dollars, with sufficient security on or before the first day of January next,
97 conditioned to answer all damages and costs that shall be adjudged against them if they shall fail to make good their plea.

And afterwards, to wit, on the twenty-seventh day of December, in the year last aforesaid, came again the said complainants by their said proctors, and filed in the office of the clerk of said court their appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Supreme Court of the United States.

Appeal from the district court of the United States for the southern district of Illinois, in prize.

THE UNITED STATES
vs.
650 BALES OF COTTON, &c., 788 BALES 52 sacks of cotton, 409 bales 139 sacks of cotton, and 1,000 bales of cotton, Wellington W. Withenbury and Ross W. Doyle, claimants of 935 bales of cotton.

98 Know all men by these presents that we, Wellington W. Withenbury and Ross W. Doyle, as principals, and Charles Ridgely, as surety, are held and firmly bound to the United States in the sum of two thousand dollars, to be paid to the United States, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this twenty-seventh day of December, A. D. 1865.

The condition of this obligation is such, that whereas the above-named Wellington W. Withenbury and Ross W. Doyle have prayed an appeal to the Supreme Court of the United States to reverse a decree rendered in favor of the United States, and against the said Wellington W. Withenbury and Ross W. Doyle, in the above-entitled cause, on the sixth day of November, A. D. 1865, by the district court of the United States for the southern district of Illinois, which appeal has been allowed:

Now, therefore, if the above-named Wellington W. Withenbury and Ross W. Doyle shall prosecute their said appeal to effect, and answer all damages and costs that shall be adjudged against
99 them if they shall fail to make good their plea, then this ob-

ligation shall be void; otherwise, the same shall be and remain in full force and virtue.

W. W. WITHENBURY. [SEAL.]
R. W. DOYLE. [SEAL.]
CHARLES RIDGELY. [SEAL.]

Approved Dec. 27, 1865.

S. H. TREAT, *Dist. Judge.*

Filed Dec. 27th, 1865.

GEO. P. BOWEN, *Clerk.*

The naval reports relating to the capture of said cotton and the documents and papers accompanying the same transmitted to said court by the captors, and filed in the office of the clerk of said court, are in the words and figures following, to wit:

NAVAL REPORTS AND DOCUMENTS.

Letter of Captain A. M. Pennock, reporting capture of 650 bales cotton, &c.

[Extract.]

100 OFFICE MISSISSIPPI SQUADRON,
Mound City, Ills., May 13, 1864.

SIR: I have the honor to inform you that the following cotton captured by vessels belonging to this squadron, under command of Rear Admiral Porter, is now at Cairo, Illinois, stored wits Messrs. Holliday & Co., * * * * * * *
103 bales cotton taken by the Red River expedition * *
63 bales cotton taken by the Red River expedition, 484 bales cotton taken by the Red River expedition, 17 bales of which are put in bags, the bales having broken open * * * * * *

I also report the following articles as prize to the Red river expedition, viz: 100 coils rope, 16 bales, 8 rolls, and 160 pcs. bagging, and 29 pcs. leather. * * * * * *

Very respectfully, your ob't serv't,

A. M. PENNOCK,
Fleet Capt. and Com'd't Station.

Hon. S. H. TREAT, *U. S. Judge*
101 *for the Southern Dist. of Illinois, Springfield, Ill.*

Filed May 18th, 1864.

GEO. P. BOWEN, *Clerk.*

Letter of Rear-Admiral D. D. Porter, concerning 484 bales of cotton reported as belonging to Red River expedition.

MISSISSIPPI SQUADRON, FLAG-SHIP BLACK HAWK,
Mound City, May 31, 1864.

SIR: On the 13th inst., Captain Pennock reported to you 484 bales cotton belonging to the Red River ex. This should have been put down to the credit of the Ouachita river, and the following vessels

are entitled to share: Black Hawk, Fort Hindman, Cricket, Eastport, Lafayette, Neosho, Ozark, Osage, Choctaw, Chillicothe, Louisville, Carondelet, Benton, Pittsburg, Mound City, Essex, Lexington, Ouachita, Gazelle, Kenwood, Juliet, Avenger.

Very respectfully, &c.,

DAVID D. PORTER, *Rear-Admiral.*

Hon. S. H. TREAT,
U. S. Dist. Judge, Springfield, Ill.

102 Filed June 3, 1864.

GEO. P. BOWEN, *Clerk.*

Letter Capt. A. M. Pennock, reporting capture of 788 bales, 52 sacks and 1,412 bales, 139 sacks cotton, by Red and Ouachita River expedition.

OFFICE OF MISSISSIPPI SQUADRON,
Mound City, Ills., May 18, 1864.

SIR: I have the honor to inform you that the following cotton is now stored with Messrs. Halliday Bros., Cairo, Illinois, it having been captured by vessels belonging to this squadron, under command of Rear Admiral D. D. Porter, viz: 788 bales and 52 sacks of cotton captured by the Red and Ouachita River expedition, 1,412 bales and 139 sacks of cotton captured by the Ouachita river expedition.

I herewith enclose a letter dated May 2d, 1864, from Lieut. Com'dr K. R. Breese, comd'g U. S. S. Black Hawk, in relation to the former lot, and a letter from Lieut. Com'dr T. M. Ramsay, comd'g U. S. S. Choctaw, dated April 21st, 1864, in relation to the latter lot.

Very respectfully, your ob't serv't,

103 A. M. PENNOCK,
Fleet Capt. and Com'd't Station.

Hon. S. H. TREAT, *U. S. Judge*
for the Southern Dist. of Illinois, Springfield, Ill.

Filed May 21st, 1864.

GEO. P. BOWEN, *Clerk.*

Letter of Lt. Com. K. R. Breese, concerning cotton captured on Red and Ouachita rivers.

MISSISSIPPI SQUADRON, FLAG-SHIP BLACK HAWK,
Mouth Red River, May 2d, 1864.

SIR: I send up by the Ike Hammeth a barge loaded with cotton, being a portion of that captured on the Red and Ouachita rivers. I do not know the number of bales contained in the barge, not having the account in my possession.

Very respectfully, your ob't serv't,

K. R. BREESE,
Lt. Commander, Comd'g.

Cap't A. M. PENNOCK,
Fleet Cap't and Com't Naval Station, Cairo, Illinois.

Filed May 21st, 1864.

GEO. P. BOWEN, *Clerk.*

104 *Letter of Lt. Com'd'r F. M. Ramsay, concerned cotton captured on Ouachita river.*

U. S. S. CHOCTAW,
Off mouth of Red River, April 21st, 1864.

SIR: I send up by the V. F. Wilson three barges of cotton, captured by the expedition up Ouachita river. Another barge will be sent up by the next towboat. There are twenty-eight hundred and nine bales in all. Lt. Comd'r J. P. Foster had command of the expedition, and would have written you to-day in regard to the cotton, but he was obliged to leave here very suddenly.

Very respectfully, your ob't serv't,

FRANK. M. RAMSAY,
Lt. Com'd'r, Com'd'g 3d District.

Captain A. M. PENNOCK,
Fleet Captain and Commandant, Cairo, Illinois.

Filed May 21st, 1864.

GEO. P. BOWEN, *Clerk.*

Letter of Capt'n A. M. Pennock, correcting report as to 1,412 bales cotton.

OFFICE OF MISSISSIPPI SQUADRON,
Mound City, Illinois, May 26, 1864.

105 SIR: On the 18th instant I reported to you 788 bales and 52 sacks of cotton, also 1,412 bales and 139 sacks. I should have reported 409 bales and 139 sacks. Will you please rectify any mistake in libelling the cotton, which may have occupied in consequence of my error in reporting it.

Very respectfully, your ob't serv't,

A. M. PENNOCK,
Fleet Captain and Com'd'g Station.

Hon. S. H. TREAT, *U. S. Judge*
for the Southern District of Illinois, Springfield, Ills.

Filed May 28th, 1864.

GEO. P. BOWEN, *Clerk.*

Letter of Rear-Admiral D. D. Porter, reporting capture of 1,000 bales of cotton.

MISSISSIPPI SQUADRON, FLAG-SHIP BLACK HAWK,
Mound City, May 31, 1864.

SIR: I have to report to you one thousand bales cotton, captured by Ouachita River ex., and now at this place. The following vessels are entitled to share: Black Hawk, Fort Hindman, Cricket,
106 Eastport, Lafayette, Neosho, Ozark, Choctaw, Osage, Chillicothe, Louisville, Carondelet, Benton, Pittsburg, Mound City, Essex, Lexington, Ouachita, Gazelle, Kenwood, Juliet, Avenger.

Very respectfully, your ob't serv't,

DAVID D. PORTER, *Rear-Admiral.*

Hon. S. H. TREAT,
U. S. Dist. Judge, Springfield, Illinois.

Filed June 3d, 1864. GEORGE P. BOWEN, *Clerk.*

Letter of Capt'n A. M. Pennock, transmitting letters and documents relating to cotton captured by Ouachita River expedition.

OFFICE OF MISSISSIPPI SQUADRON,
Mound City, Ills., May 28, 1864.

SIR: I send you herewith several letters and documents relative to the cotton captured by vessels enhaged in the Black and Ouachita river expedition, under command of Rear-Admiral D. D. Porter. Enclosed please find a list of them.

Very respectfully, your ob't serv't,

A. M. PENNOCK,
107 *Fleet Capt. and Com'd't of Station.*

Hon. S. TREAT, *U. S. Judge*
for the Southern District of Illinois, Springfield, Illinois.

List of letters and documents relative to cotton captured by the Black and Ouachita River expedition, sent to Hon. S. H. Treat, U. S. judge for southern district of Illinois, by Capt. A. M. Pennock, May 28th, 1864.

Letter of Act'g Master John Swaney, April 12th, 1864.
Report of Act'g Master John Swaney, April 13th, 1864.
Report of Act'g Vol. Lt. Cha's A. Wright, April 14th, 1864.
Receipt of Jas. Menard, dated M'ch 24th, 1864.
Report of Act'g Vol. Lt. Cha's A. Wright, April 15th, 1864.
Report of Lt. Com'd'r Frank M. Ramsay, April 15th, 1864.
Report of Lt. Com'd'r Jas. P. Foster, April 15th, 1864.
Affidavit of Lt. Com'dr Byron Wilson and others, April 11th, 1864.
Report of Act'g Vol. Lt. Cha's A. Wright, April 10th, 1864.
Report of Act'g Master T. McElroy, April 3d, 1864.
Affidavit of B. Ballard, April 16th, 1864.
Report of Lt. Com'd'r Jas. P. Foster, of April 11th, 1864.
Report of Act'g Master J. S. Watson, April 11th, 1864.
Report of Act'g Master Jno. Swaney, April 12th, 1864.
Report of Act'g Vol. Lt. Cha's A. Wright, April 13th, 1864.
Report of Lt. Com'd'r Byron Wilson, April 15, 1864.
108 Affidavits of R. Dorch, Jno. Ray, and others, April 11th, 1864.
Report of Act'g Master J. S. Watson, April 15th, 1864.
Report of Lt. Com'd'r Jas. P. Foster, April 20th, 1864.
Report of J. W. Moore, com'd'r steamer Ruby, April 21st, 1864.
Report of Lt. Com'dr Byron Wilson, April 15th, 1864.
Affidavit of M. C. Hardy, sheriff of Ouachita, April 18th, 1864.
Letter of Jas. P. Foster to Admiral Porter, concerning M. C. Hardy, sheriff of Ouachita parish, April 21st, 1864.
Report of Acting Ensign J. W. Chambers, com'd'g U. S. S. Prairie Bird, April 23d, 1864.

Filed June 1st, 1864.

GEO. P. BOWEN, *Clerk.*

Report of Lt. Com'd'r Jas. P. Foster, relative to cotton captured by Black River and Ouachita expedition.

U. S. S. LAFAYETTE, *April 20th*, 1864.

SIR: Enclosed you will please find detailed reports of the different officers under my command in the Black river and Ouachita expedition, of cotton captured and negroes, refugees, and prisoners taken on board, likewise the affidavits of three different persons testifying to the character of the cotton which we captured. You will also
109 find a letter from Mr. Ludeling, who claims forty-three bales, with affidavits testifying to his loyalty. As to his loyalty, I know nothing, or of the part he has taken, but know that the cotton which he claims was formerly owned by the confederate government, which he says he bought in good faith of Mr. Waddell, who received it from the confederate government, in August, 1863. The cotton taken on Mr. Ray's place I gave a receipt of the number for at his request. Mr. Ray I believe to be a secessionist at heart, if not avowedly, and I think it has been through his influence that much of the cotton that is captured has been spared in hopes of getting out his own. His family are nearly all, if not all, secessionists, and some of them hold offices under the confederate government. He, from what I can learn, has not held any office under the rebel government. In talking to him in relation to this cotton, I asked him if he was a Union man, and if he was willing to take the oath of allegiance. He replied that it was impossible; that he could not do so; that it would jeopardize his life. I then told him that I would seize his cotton, and that he must look to higher authority for adjustment. My
110 impressions are that he is a secessionist of the first order, and would not scruple to injure us in any manner whatever, if it was not for the hope of realizing the cotton that this expedition has taken from him. There are among the papers sent, two by a confederate officer exempting Menard's cotton from burning, as it had been purchased from the confederate government.

I am, very respectfully, your ob't serv't,

JAS. P. FOSTER,
Lieut. Com'dr U. S. N., Com'd'g 2d District, Miss. River.

Rear-Admiral DAVID D. PORTER,
Com'd'g Miss. Squadron.

Filed June 1st, 1864.

GEO. P. BOWEN, *Clerk.*

Report of cotton captured by U. S. S. Juliet in Black and Ouachita Rivers expedition.

U. S. S. JULIET, OFF MONROE,
Ouachita River, April 11th, 1864.

SIR: In obedience with your instructions, I have to report to you the following amounts of cotton captured by my vessel on the Black and Ouachita river expedition, under your command:

111 April 8. 15 bales, no marks, off steamer Bayou.

April 8. 58 bales, marks, C. S. A., Simmons, in the woods below Simmons's plantation.

April 8. 594 bales, marked C. S. A., Simmons, from Simmons's plantation.

April 9. 116 bales, marked C. S. A., Simmons, from Ballard's plantation.

April 10. 132 bales, marked C. S. A., F. P., from Bartlett's plantation.

Total, 915 bales.

The 594 bales were taken on the barge Fawcett, in conjunctian with your forces, we having checked them in the barge. The two last mentioned lots are now on board the vessel.

Very respectfully your ob't serv't,

T. S. WATSON,
Acting Master, Com'd'g.

To Lieut. Com'd'r JAS. P. FOSTER,
Com'd'g Exped'n, U. S. S. Lafayette.

Filed June 1, 1864.

GEO. P. BOWEN, *Clerk.*

Report of cotton captured by U. S. S. Ouachita, on Ouachita river.

U. S. ST'R OUACHITA,
Mouth Black River, 5th April, 1864.

112 SIR: The following is a list of cotton taken on board this vessel up Ouachita river:

April 8th. 17 bales covered with staves, iron bound, no owner or abandoned.

April 9th. 125 bales, marked C. S. A., and afterwards Simmons.

April 10th. 309 bales, marked L. M.

April 13th. 42 bales, C. S. A.; cotton found abandoned.

April 15th. 5 bales, no marks, from Scott's plantation.

Total, 498.

Very respectfully,

BYRON WILSON, *Lt. Com'd'r.*

Lt. Com'd'r J. P. FOSTER, *Com'd'g Expedition up Ouachita.*

Filed June 1, 1864.

GEO. P. BOWEN, *Clerk.*

Report of cotton captured by the U. S. S. Kenwood from Harris's and Simmons's plantations.

U. S. S. KENWOOD, *Washita River, April* 12, 1864.

SIR: I have taken on board to-day one hundred and thirty bales of cotton from E. W. Harris's plantation, marked Waco, has been in

the hands of the confederate government, and sold by the
113 government to parties unknown. I have also taken at Dr. Simmons's plantation seventeen bales, marked C. S. A.

Very respectfully your ob't serv't,

JNO. SWANEY, *Act. Master Com'g.*

To Lieut. Com'd'r J. P. FOSTER,
Com'd'g Washita Expedition, U. S. S. Lafayette.

Filed June 1st, 1864.

GEO. P. BOWEN, *Clerk.*

Statement of B. Ballard, in relation to cotton claimed by G. A. Le More & Co., and Warneken, Kirchhoff & Co.

U. S. S. LAFAYETTE, *Mississippi River, April 16th,* 1864.

This is to certify that the cotton seized by Capt. Foster, (commanding the Black river and Ouachita expedition,) on the plantation formerly owned by Dr. B. Ballard, in Caldwell parish, La., which was sold by said Ballard to Mess. Tatman & Simmons, was made on said plantation, and by the agency of said Simmons, was branded and placed on the banks of the river, to be delivered to a French
114 subject, (as he stated himself to be, named Le More, to be shipped to a French mercantile house to pay for merchandise furnished to Jefferson Davis, president of the Confederate States of America, (as I was informed by Dr. Simmons,) but which was taken by Capt. Foster, on account of the bales being marked C. S. A., meaning the Confederate States of America.

Dr. Simmons sold to Messrs. Warneken, Kirchhoff & Co. one hundred bales of cotton, the 27th November, which cotton was marked I 1, 67 bales: O 1, 33 bales—100 (one hundred) bales cotton.

Dr. Ballard arranged with Mr. Le More to take this cotton down with his to New Orleans, and deliver it to the agent of Messrs. Warneken, Kirchoff & Co.

B. BALLARD.

Witnesses: D. H. HAYDEN,
B. R. ESHLEMAN.

Filed June 1, 1864.

GEO. P. BOWEN, *Clerk.*

115 *Report of cotton captured by the vessels of the Black River and Ouachita expedition.*

Date.	Name of vessel.	No. bales.	Marks.	Remarks.
April 8.	Juliet	15	None	
8.	Juliet	58	C. S. A	Simmons's plantation.
8.	Juliet	594	C. S. A	Simmons's plantation.
9.	Juliet	116	C. S. A	Simmons's plantation.
10.	Juliet	132	C. S. A	Bartlett's plantation.
8.	Ouachita	17	None	Iron bound, abandoned.
9.	Ouachita	125	C. S. A	Also marked Simmons.
10.	Ouachita	309	L. M	
13.	Ouachita	42	C. S. A	Abandoned.
15.	Ouachita	5	None	Scott's plantation.
10.	Avenger	252	F. P. & C. S. A	Angus Swan's plantation.
13.	Avenger	114	None, Possom Bend, G. G. W.	Mixed lot. G. G. Williams.
14.	Avenger	8	T. W	J. B. Bambrick.
11.	Kenwood	130	C. S. A. Waco	E. W. Harris's plantation.
11.	Kenwood	17	C. S. A	Simmons's plantation.
12.	Kenwood	200	C. S. A	Bartlett's plantation.
12.	Kenwood	115	C. S. A	Swan's plantation.
13.	Kenwood	344	None	John Ray & Bro.
15.	Kenwood	22	J. T. C., C. S. A.	Butler's plantation.
11.	La Fayette	3	None	Trenton, Crosby & Slaughter.
11.	La Fayette	30	None	D. Brahard.
11.	La Fayette	43	O. W. S., C. S. A	Ludeling, Monroe, La.
13.	La Fayette	1	None	Columbia, La.
14.	La Fayette	2	C. S. A	Mrs. Keenan.
14.	La Fayette	1	None	Mrs. Keenan.
	Total	2,725		

116 JAS. P. FOSTER,
Lieut. Com'd'g, Com'd'g 2d Dist. Miss. River.
Rear-Admiral DAVID D. PORTER, *Com'd'g Miss. Squadron.*

Filed June 1st, 1864.

GEO. P. BOWEN, *Clerk.*

The depositions and documents read in evidence upon the hearing of said cause are in the words and figures following, to wit:

Deposition of Lt. Com'd'r James P. Foster, in behalf of the United States, taken before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the 26th day of November, A. D. 1864.

Int'y 1st. What is your name, age, and occupation?

Ans. James P. Foster; age thirty-seven years; I am lieut. commander in the United States navy.

117 Int'y 2d. Were you engaged in the Red river expedition?

Ans. I was.

Int'y 3d. In what branch of the United States service?

Ans. In the naval service.

Int'y 4th. By what branch of the United States service was the Red river expedition conducted? When did it commence, and how far up Red river did said expedition go? What obstructions did it meet from confederate authorities, and in whose military possession was the country before said expedition went up Red river?

Ans. The expedition was conducted by the naval service on the river, by the army on the land, both acting together. Said expedition started up the river in the month of March, 1864; the exact date I don't know. I know very little about the Red river expedition. I think it was about the 20th of March. We met obstructions such as forts, rafts, and guerillas, and it was in the military possession of the rebel government, or you might say, in the hands of the enemy.

Int'y 5th. Who commanded the expedition on the river?

118 Ans. Admiral David D. Porter.

Int'y 6th. State what you may know of the seizure of cotton on said expedition.

Ans. On Red river I only know of one case that I was connected with. That was Mrs. Robertson, who lived about two miles back of Pineyville, opposite Alexandria. I only knew of about 130 bales taken from her. Mrs. Robertson was a widow. Some of her cotton was raised two years previous, and some of it was five or six years of age.

Int'y 7th. Were you engaged in the Ouachita expedition? If so, when did said expedition commence? by whom was it conducted? how far up the river did it go? what obstruction or resistance did it meet from the so-called confederate forces or government, and in whose military possession was the country penetrated by said expedition?

Ans. I was engaged in that expedition. It commenced on the 6th of April, 1864. I was the commander of the expedition, and we went with a part of my boats as far as Ouachita City. I think it some 200 miles up the river; I am not certain. We met with very little obstruction on the river until we reached Monroe. There

119 my pickets were attacked by the enemy's cavalry. The country where we went was in the military possession of the enemy.

Int'y 8. What do you know, if anything, of the seizure of a lot of cotton claimed by a man by the name of Le More?

Ans. All the cotton claimed by Le More & Co. was marked C. S. A., with very few exceptions. Whilst I was taking on board cotton claimed by this firm, Mr. Le More came to me and represented himself as the agent of the house of Le More & Co. He stated in presence of witnesses, that they had received this cotton in exchange for gray back clothing, which they forwarded to Kirby Smith's army. He not only made this statement in the presence of three or four officers, he also gave me an affidavit signed by himself, which affidavit was sent to Admiral Porter. This cotton marked C. S. A. was seized about one and a half miles below Monroe, on the opposite side of the river, and not as I know on any particular plantation. Mr. Le More stated that when they were burning cotton through that section, their cotton was protected by Kirby Smith's army. This he stated in answer to my question why the cotton was not burned with the rest.

115 *Report of cotton captured by the vessels of the Black River and Ouachita expedition.*

Date.	Name of vessel.	No. bales.	Marks.	Remarks.
April 8.	Juliet	15	None	
8.	Juliet	58	C. S. A	Simmons's plantation.
8.	Juliet	594	C. S. A	Simmons's plantation.
9.	Juliet	116	C. S. A	Simmons's plantation.
10.	Juliet	132	C. S. A	Bartlett's plantation.
8.	Ouachita	17	None	Iron bound, abandoned.
9.	Ouachita	125	C. S. A	Also marked Simmons.
10.	Ouachita	309	L. M	
13.	Ouachita	42	C. S. A	Abandoned.
15.	Ouachita	5	None	Scott's plantation.
10.	Avenger	252	F. P. & C. S. A	Angus Swan's plantation.
13.	Avenger	114	None, Possom Bend, G. G. W.	Mixed lot. G. G. Williams.
14.	Avenger	8	T. W	J. B. Bambrick.
11.	Kenwood	130	C. S. A. Waco	E. W. Harris's plantation.
11.	Kenwood	17	C. S. A	Simmons's plantation.
12.	Kenwood	200	C. S. A	Bartlett's plantation.
12.	Kenwood	115	C. S. A	Swan's plantation.
13.	Kenwood	344	None	John Ray & Bro.
15.	Kenwood	22	J. T. C., C. S. A.	Butler's plantation.
11.	La Fayette	3	None	Trenton, Crosby & Slaughter.
11.	La Fayette	30	None	D. Brahard.
11.	La Fayette	43	O. W. S., C. S. A	Ludeling, Monroe, La.
13.	La Fayette	1	None	Columbia, La.
14.	La Fayette	2	C. S. A	Mrs. Keenan.
14.	La Fayette	1	None	Mrs. Keenan.
	Total	2,725		

116 JAS. P. FOSTER,
Lieut. Com'd'g, Com'd'g 2d Dist. Miss. River.
Rear-Admiral DAVID D. PORTER, *Com'd'g Miss. Squadron.*

Filed June 1st, 1864.

GEO. P. BOWEN, *Clerk.*

The depositions and documents read in evidence upon the hearing of said cause are in the words and figures following, to wit:

Deposition of Lt. Com'd'r James P. Foster, in behalf of the United States, taken before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office, in the city of Springfield, in said district, on the 26th day of November, A. D. 1864.

Int'y 1st. What is your name, age, and occupation?

Ans. James P. Foster; age thirty-seven years; I am lieut. commander in the United States navy.

117 Int'y 2d. Were you engaged in the Red river expedition?

Ans. I was.

Int'y 3d. In what branch of the United States service?

Ans. In the naval service.

Int'y 4th. By what branch of the United States service was the Red river expedition conducted? When did it commence, and how far up Red river did said expedition go? What obstructions did it meet from confederate authorities, and in whose military possession was the country before said expedition went up Red river?

Ans. The expedition was conducted by the naval service on the river, by the army on the land, both acting together. Said expedition started up the river in the month of March, 1864; the exact date I don't know. I know very little about the Red river expedition. I think it was about the 20th of March. We met obstructions such as forts, rafts, and guerillas, and it was in the military possession of the rebel government, or you might say, in the hands of the enemy.

Int'y 5th. Who commanded the expedition on the river?

118 Ans. Admiral David D. Porter.

Int'y 6th. State what you may know of the seizure of cotton on said expedition.

Ans. On Red river I only know of one case that I was connected with. That was Mrs. Robertson, who lived about two miles back of Pineyville, opposite Alexandria. I only knew of about 130 bales taken from her. Mrs. Robertson was a widow. Some of her cotton was raised two years previous, and some of it was five or six years of age.

Int'y 7th. Were you engaged in the Ouachita expedition? If so, when did said expedition commence? by whom was it conducted? how far up the river did it go? what obstruction or resistance did it meet from the so-called confederate forces or government, and in whose military possession was the country penetrated by said expedition?

Ans. I was engaged in that expedition. It commenced on the 6th of April, 1864. I was the commander of the expedition, and we went with a part of my boats as far as Ouachita City. I think it some 200 miles up the river; I am not certain. We met with very little obstruction on the river until we reached Monroe. There

119 my pickets were attacked by the enemy's cavalry. The country where we went was in the military possession of the enemy.

Int'y 8. What do you know, if anything, of the seizure of a lot of cotton claimed by a man by the name of Le More?

Ans. All the cotton claimed by Le More & Co. was marked C. S. A., with very few exceptions. Whilst I was taking on board cotton claimed by this firm, Mr. Le More came to me and represented himself as the agent of the house of Le More & Co. He stated in presence of witnesses, that they had received this cotton in exchange for gray back clothing, which they forwarded to Kirby Smith's army. He not only made this statement in the presence of three or four officers, he also gave me an affidavit signed by himself, which affidavit was sent to Admiral Porter. This cotton marked C. S. A. was seized about one and a half miles below Monroe, on the opposite side of the river, and not as I know on any particular plantation. Mr. Le More stated that when they were burning cotton through that section, their cotton was protected by Kirby Smith's army. This he stated in answer to my question why the cotton was not burned with the rest.

120 There was 300 and odd bales. It is 309 bales I think. I speak of all the cotton claimed by that firm wherever taken. It was taken from different points, and at the Simmons plantation there was 810 bales I think captured there.

Int'y 9th. Please examine the paper now handed you marked Exhibit A, and state what you know about it.

Ans. I took that affidavit, and read it to Le More, who said it was correct. He also said that the cotton he paid for in gold was his own cotton, comprising a lot of some 200 bales in another lot. Before this talk with Le More, I had seized all the cotton. As we went up the river, I seized it as we went; put men in charge of it, and directed men to put it on the boats, and good deal of it I had guards over, altho' it was not on the boats. Le More saw us taking it on board. When he came down and saw us taking this cotton, was when we had this talk, and I took this affidavit shown me, and his affidavit I have spoken of. I think over two-thirds of the cotton claimed by Le More was marked C. S. A. The conversation which I had with Le More referred to all the cotton claimed by Le More & Co., in all
121 that section of the country. This cotton taken from Simmons's plantation, and the 309 bales was all taken below Monroe.

Cross-interrogatory by Judge Logan:

Ques. What was the nature of the obstructions you met with below Monroe?

Ans. We met with no military obstructions. They had all been cleared away by an expedition commanded by Capt'n Ramsay some five weeks before.

Filed Nov. 28, 1864.

GEO. P. BOWEN, *Clerk.*

Exhibit A.—Referred to in the deposition of Jas. P Foster.

U. S. S. LAFAYETTE, *April* 11, 1864.

We, the undersigned officers, heard Mr. Jules Le More acknowledge that the cotton taken on board by the U. S. S. Ouachita belonged to G. A. Le More & Co., of which firm he acknowledges himself the agent. Said cotton was purchased from the confederate government, for which the firm exchanged provisions and clothing. We also heard the same gentleman, Jules Le More, say that this cotton was
122 paid for in gold at twenty cents (20) per lb. The number of bales taken was three hundred and nine (309.)

BYRON WILSON, *Lt. Com'd'r.*
J. S. WATSON, *Act'g Master.*
WM. HARRIS, *Act'g Ensign.*

Subscribed and sworn to before me this 11th day of April, 1864.

JAS. P. FOSTER,
Lieut. Com'd'r U. S. N., Com'd'g 2d Dist. Miss. River.

Filed Nov. 28, 1864.

GEO. P. BOWEN, *Clerk.*

Deposition of L't Com'r Francis M. Ramsay in behalf of the United States, taken before George P. Bowen, clerk of the district court of the United States for the southern district of Illinois, at his office in the city of Springfield, in said district, on the 3d day of October, A. D. 1864.

My name is Francis M. Ramsay. I am a lieutenant commander in the navy of the United States; was in command of the United States steamer Choctaw, of the Mississippi squadron, whilst she was attached to the Red, Black, and Ouachita River expeditions.

123 When we entered on the Ouachita expedition, the whole country from the mouth of the Black river to Ouachita City, as far as I went, was in possession of the rebels. On arriving at Monroe, by order of Lieutenant Commander J. P. Foster, commanding Ouachita River expedition, I landed with 150 armed men and took possession of the city.

I was introduced to a Mr. Ray, whose first name, according to my best recollection and belief, was John, as the mayor of the town of Monroe, and was informed he could give me any information I desired. I questioned him, but was unable to get a single answer of information. On our way up to Monroe, at a plantation owned by or called Simmons's plantation, we seized, to the best of my recollection, about 700 bales of cotton, each bale of which I examined, and found "C. S. A." plainly marked on each. One of the vessels of this expedition was fired upon going up to Monroe, between Monroe and Harrisonburg, and another on returning between Monroe and Ouachita City. I seized about 700 bales of cotton. It was in two lots,

124 one lot being on Swan's plantation, to the best of my recollection, the other, I think, on Bartlett's plantation, all of which was plainly marked, when found, "C. S. A." on each bale. On our way down the river, on a plantation of Ray Bro's, known as Ray's plantation, I seized a quantity of cotton; I don't remember the number of bales, but each bale was marked "C. S. A.," and about 350 bales in slabs without any mark whatever on it. This last, slab cotton, Mr. Ray—who was on the place, whose name, I think, was James L., but am not positive—informed me was the joint property of himself and his brother, John Ray. I seized this latter cotton by order of Lieutenant Commander J. P. Foster, commanding that expedition.

It was between the 5th and 20th days of April, A. D. 1864, these several seizures were made.

At Trinity, at the junction of Black river, the Tensas, Ouachita, and Little river, the rebels had two forts. At Harrisonburg, on the Ouachita River, they have and had five forts; at Monroe they had one, and, I think, two forts.

125 About the first of March, 1864, the three guns in the forts at Trinity were captured by me while in command of an expedition up the Ouachita river, and the day following we had a severe fight with the forces under General Polignac at Harrisonburg. While the vessels were at Monroe, a skirmish took place between the crew of the United States steamer Ouachita and the re-

bels a few miles above a little town, the name of which I don't now remember. It was the first town above Monroe, on the opposite bank; I think called Trenton. This place, Monroe, had been the rebels' headquarters, and of the rebel General Lidell.

The cotton spoken of was all sent to Cairo, so far I know; they were ordered to be sent to Cairo.

Cross-interrogatories by Mess. Hay, Edwards, and Springer:

Ques. Did the person of whom you speak on the Ray plantation as James L. Ray, claim the ownership of any other cotton found upon that plantation but the cotton in slabs? And state what he
126 may have said about the ownership of the cotton not in slabs found on his plantation and marked "C. S. A."

Ans. He claimed only the cotton in slabs, but said he had not mentioned this other cotton to Capt. Foster, as he had hoped to make use of it for his own benefit, or words to that effect.

Re-examined by L. Weldon, esq.:

Ans. I went up the Red river as far as Alexandria. The whole country from the mouth of that river to Alexandria was in possession of the rebels at the time we entered the river. About 12 miles below Fort De Russey the river was obstructed, as we found, by two rows of piles driven across, and logs drifted down against the piles. Fort De Russey, with its guns and part of its garrison, was in possession of our troops when I got there. I also found Alexandria in possession of the naval and military forces of the United States when I reached there. This was about the middle of March, 1864. The only cotton I seized on this expedition up Red river was
127 17 bales in Pineyville, each bale marked "C. S. A.;" also 17 bales about two miles from Pineyville belonging to a Mr. Gray; also 30 bales belonging to Dr. Maddox, about three miles from Alexandria; also 81 bales belonging to a Mrs. H. Robertson, about two miles from the river back of Pineyville. I understand the H. in the name of Mrs. H. Robertson applied to her husband, and not to her name. The whole of the cotton captured on this expedition was ordered to be and was sent to Cairo, according to my best knowledge and belief.

Filed Oct. 3d, A. D. 1864.

GEO. P. BOWEN, *Clerk.*

Deposition of Milton M. Rhorer, in behalf of Withenbury and Doyle, taken before A. J. Ballard, United States commissioner, at his office, in the city of Louisville, Kentucky, on the 14th day of December, A. D. 1864.

Question 1st. State your age, your present residence, and your business.

Ans. I am about thirty-four years of age; I now reside at
128 Louisville, Kentucky, and I am now teller in the Louisville Savings Institution, an incorporated bank.

Question 2d. State whether you know Wellington W. Withen-

bury and Ross W. Doyle; where you first knew them, and how long you have known them.

Ans. I do know both of them. I first knew them in Alexandria, Louisiana. I have known Withenbury about ten years, and Doyle about eighteen months.

Ques. 3d. Where were you when the present rebellion broke out? and where were you in 1863 and the spring of 1864? What was then your business? State the particulars fully.

Ans. I was in Alexandria, La., when the rebellion broke out, and in 1863 and the spring of 1864. When the rebellion broke out I was a cotton planter. In 1863 and the spring of 1864 I was clerk in the office of A. W. McKee, who was agent of the so-called Confederate States for the purchase of cotton.

Ques. 4. Please state what your position was in reference to the rebellion; what were your sentiments, and what course did you pursue in aiding or in opposing the rebellion; how came you to
129 be connected with the office referred to.

Ans. I was always opposed to the rebellion. I did nothing in aid of the rebellion; and while in Alexandria I was unable to do any thing in opposition. I obtained the situation in the cotton office to avoid conscription in the rebel army. In explanation of my statement that I was unable to do anything in opposition to the rebellion, I mean that my life and liberty would have been imperilled by my avowing openly Union sentiments. I left there and came into the Union lines as soon as it was possible for me to get away with my family, which was when the Union forces under Gen'l Banks were there, in the spring of 1864.

Ques. 5. Who was the cotton agent referred to? What was his power to buy and dispose of cotton in payment for services rendered his department? And if you know, state if he ever did pay for such services with cotton belonging to the so-called confederate government. State cases, if you can.

Ans. As I have already stated, A. W. McKee was the agent of the so-called Confederate States for the purchase of cotton; he
130 was the regularly appointed agent of C. G. Memminger, the treasurer of the States in rebellion; his authority for the disposal of cotton for services rendered his department emanated from Gen'l Kirby Smith and Dick Taylor. Teamsters were frequently paid from the office in which I was employed; one bale of cotton for each bale they hauled from the vicinity of Red river to Niblett's Bluff, on the Sabine river.

Ques. 6. Look at paper B and say if you ever saw the original and indorsement thereof; if so, where did you see it? under what circumstances? in whose handwriting are the two memoranda thereon, reading "A true copy: A. W. McKee, general agent to purchase cotton in La."? Are you familiar with the handwriting of A. W. McKee and R. Taylor, maj. gen'l? If so, what can you say of the originals and the indorsements thereon, signed respectively A. W. McKee and R. Taylor.

Ans. I saw the original of paper B, and the original indorsement

thereon. I saw it in the cotton office at Alexandria, La. It was handed me by A. W. McKee to be copied, and I copied both the letter and the indorsement. The memoranda are in the hand-
131 writing of A. W. McKee. I am acquainted with the hand-writing of A. W. McKee, but am not very familiar with the handwriting of R. Taylor. I am certain that the letter was written and signed by A. W. McKee, and am satisfied in my own mind that the indorsement was written and signed by R. Taylor, maj. gen'l.

Ques. 7. What can you say as to A. W. McKee's power to exempt persons from service in the army who were employed by him in his department. Do you know of a general order issued by R. Taylor, commanding that department, to that effect? Was it made public? and if so, in what way was it made public?

Ans. A. W. McKee was empowered to exempt such persons as he had employed from military service. Gen'l R. Taylor issued an order to that effect, which was published in the "Alexandria Democrat," and it was also published in handbills, which were distributed over the country adjacent.

Ques. Do you know of any contracts made by A. W. McKee, as cotten agent, whereby he agreed to pay bale for bale for cotton moved from Red river to Sabine river, or from any other
132 point to any other point? If so, who were these parties?

Ans. I do. B. B. Simms, W. Bailey, J. Torras, and may others were paid bale for bale for moving cotton from Alexandria to Niblett's Bluff.

Ques. 9. Can you state what services were rendered by Withenbury and Doyle to McKee's department, or any other department of the so-called confederate government?

Ans. Doyle was for some time employed by McKee in the cotton office at Alexandria. Afterwards Doyle and Withenbury were engaged by McKee in moving gov't cotton from the parish of Natchitoches to Sabinetown, on the Sabine river.

Ques. 10. How were they paid for these services? In what were they paid?

Ans. I do not know.

Ques. Do you know from McKee, or otherwise, whether he transferred, as such agent, any cotton to Withenbury and Doyle?

Ans. When I informed McKee, on his return from Houston, Texas, that I had turned over to Jno. A. Stevenson, on Gen. Kirby Smith's order, about sixteen thousand bales of cotton, but not having the bill of sale of the Simmons cotton, I had not turned it over, he
133 remarked that he was glad of it, as he wished to pay Withenbury & Doyle with that lot. That is all I know in answer to the question. The above remark of McKee was made in the fall or winter of 1863.

Ques. 12. Please state what you mean by the Simmons cotton. Where was it? What number of bales were there? If the so-called confederate government purchased the said cotton, when was it purchased? How was it paid for? What was the evidence of title which the confederate government had for that cotton?

Ans. By the Simmons cotton I mean the cotton purchased by the Confederate States from J. T. Simmons. It was stored on Simmons's plantation, on the Washita river, in La. There were about nine hundred bales. It was purchased by the so-called confederate government from Simmons early in 1863. It was paid for by Dr. C. G. Young's (McKee's sub-agent) order on C. G. Memminger, on which Simmons got bonds of the so-called Confederate States in Richmond.

134 The title was J. T. Simmons's receipt for the bonds in full payment for the cotton, signed on a printed form which was universally used in the cotton office in purchasing cotton from planters.

Ques. 13. Look at paper A, now shown you, and state, if you can, if you ever saw it before; if so, where? In whose handwriting is it?

Ans. I don't remember ever having seen it before; it is written by R. W. Doyle, with whose handwriting I am familiar. It is signed by A. W. McKee; it is his genuine signature.

Ques. 14. What connexion had Doyle with McKee's office? Was he in the habit of writing in that office?

Ans. He was a clerk in the office, and while so engaged wrote there regularly.

Ques. 15. Does the Simmons cotton, as described in paper A, correspond with the description of that cotton as known in the office?

Ans. The number of bales and the marks correspond, to the best of my recollection. I am unable to say whether the weights correspond or not.

Ques. 16. Please state if you have any knowledge of the sale of the Simmons cotton to any other persons or corporation than With-

135 enbury & Doyle. Did the confederate government buy any other cotton of him (Simmons) than that described in paper A?

Ans. I know of no other sale of the Simmons cotton than that expressed in paper A. I know of no other cotton being purchased by the confederate government from Simmons than the above-mentioned lot.

Ques. 17. Do you know how Withenbury and Doyle came to be employed, and their boats employed by the confederate government? Was it by compulsion, or did they voluntarily engage in that service? State all the particulars which led them to be so engaged.

Ans. I do not know.

Ques. 18. What were the positions of Withenbury and Doyle with respect to the rebellion? Did they favor the rebellion, or were they true to the government of the United States? What do you know about it?

Ans. I frequently conversed with Withenbury and Doyle about the rebellion, and they uniformly condemned it, and I have

136 always understood them to be true in their allegiance to the United States.

Ques. 19. Please state how long, and up to what time, you were connectd with the cotton office of McKee, at Alexandria, heretofore spoken of.

Ans. I was employed in the cotton office in the fall of 1862, and remained in it up to the time Gen'l Banks's expedition arrived, in the spring of 1864.

And further says not.

Exhibit A, referred to in the deposition of M. M. Rhorer.

OFFICE COTTON AGENCY,
Alexandria, Jan'y 6, 1864.

I have this day sold (and delivered the orders for) to Messrs. W. W. Withenbury and R. W. Doyle, for and in part consideration of the amount due them from the Confederate States for the value of their steamers Homer and Vigo, and other services of same, the following described lots of C. S. cotton, which is hereby declared exempted from destruction by burning, or otherwise, by any orders of myself or sub-agents; (it is understood, however, that while the said
137 lots of cotton are now in good order, under good shelter, that said Withenbury and Doyle, or those who purchase from them, shall accept all risks of natural wear and damage to bagging and rope, or accidents,) to wit: Eight hundred and thirty-one bales cotton, marked "Tatum and Simmons," C. S. A., weighing 341,482 lbs.; one hundred and four bales, marked "Simmons," C. S. A., weighing 41,735; three hundred and ninety-two bales cotton, marked "J. D. A.," weighing 208,643 lbs.; located as described in the orders drawn for the cotton.

A. W. McKEE,
C. S. Gen'l Agent to Purchase Cotton in Louisiana.

Exhibit B, referred to in the deposition of M. M. Rohrer.

OFFICE COTTON AGENCY,
Alexandria, Dec. 30, 1863.

Maj. Gen'l R. Taylor, present.

GENERAL: On the 25th day of Sept., 1862, I was instructed
138 by Col. A. C. Myers, quartermaster general C. S. A., to ship all the hides which had been taken off at the gov't beef packery, near this city, to Vicksburg, and thence to the C. S. tannery, at Columbus, Ga.

In accordance with these instructions I seized and shipped as above 9,966 dry salted hides, weighing 453,453 lbs., which, at the price allowed by the Q. M. gen'l, 17c., amounts to ($77,087 01) seventy-seven thousand eighty-seven 01-100 dollars.

These hides were the property of Dr. R. A. Porter, of New Orleans, who was, at the time the hides were taken, in New Orleans, or without the confederate lines. Dr. Porter is now here to receive payment for his hides, as above. I respectfully ask your advice as to how I shall pay him, in cotton in exposed localities or in money? I hold gov't cotton on the banks of Red and Washita rivers, which cannot be removed, at least before next summer, and, with your ap-

proval, will pay Dr. Porter with a portion of it at at the rate of 25 cts. per pound, which is more than the cotton cost.

I am instructed by the Hon. Secretary of the Treasury to
138 confer with you upon all matters that relate to the preservation of the gov't cotton.

Respectfully, your ob't servant,

A. W. McKEE,
Gen'l Agent to Purchase Cotton in La.

A true copy.

A. W. McKEE,
Gen'l Agent to Purchase Cotton in La.

[Indorsement]

H'DQU'S D. W. LA., *Alexandria, Jan. 1st*, 1864.

There can be no doubt of the policy to pay the debts of the gov't rather in cotton than in money.

First. To save the money for other uses, when cotton cannot be employed, and to relieve the gov't from the risk of holding the cotton. Especially is this true, if the creditors be willing to receive cotton in exposed positions.

R. TAYLOR, *Maj. Gen'l.*

A true copy.

A. W. McKEE,
Gen'l Agent to Purchase Cotton in La.

Filed Dec. 24th, 1864.

140 GEORGE P. BOWEN, *Clerk.*

Deposition of John M. Martin, in behalf of Withenbury and Doyle, taken before Theophilus Kemper, United States commissioner, at the residence of R. M. Corwine, esq., in the city of Cincinnati, Ohio, on the 15th day of December, A. D. 1864.

1. Please state your age, name in full, your place of residence, and your business.

Ans. John M. Martin; I am thirty-nine years old, and now reside in Wheeling, West Virginia; am a steamboat pilot by profession.

2. Are you acquainted with Wellington W. Withenbury and Ross W. Doyle? If you are, when did you know them first? Where have you known them since? State the time and the circumstances in full.

Ans. I am well acquainted with Wellington W. Withenbury and Ross W. Doyle. I have known Withenbury for more than fifteen years intimately, having been engaged with him in the capacity of steamboat pilot and clerk most of that time, and have been par-
141 ticularly intimate with him since the fall of 1860, when I left Cincinnati on his boat, and went to New Orleans. I was in his employment at the first outbreak of the present rebellion. I had my family on his boat when the news of the fall of New Orleans reached us, and continued with him until after he made several attempts to get, with his boat, the Homer, out of the rebel lines to New Orleans. We were together at Alexandria, on the Red river, in the

spring of 1863, when the United States army under General Banks, and the United States gunboats under Admiral Porter, arrived there. I was with him again at the same place in March, 1864, on the arrival there of the United States army and navy, under Banks and Porter. I have known Ross W. Doyle twelve or fifteen years. I knew him first as a steamboat man on the Ohio river, and afterwards as a steamboat captain at New Orleans, and on Red river. This was about the year 1858. I knew him intimately all the time after 1858, as we both were engaged in steamboating on Red river. I have travelled on his boat, the Vigo, since the rebellion broke out, from Alexandria
142 to Vicksburg, and have met him very often at Alexandria since. He has been at my house, and visited my family often during the year 1863, and in January, 1864, just before he went to New Orleans.

3. What was your occupation in the month of January, 1864? Where were you at that time? What were you engaged in, and where did you then reside?

Ans. In January, 1864, I was living ona rented plantation five miles from Alexandria, La. This was a temporary residence; I was waiting there for the coming of Banks's Red River expedition, as I had promised Admiral Porter and General Banks, when they left that part of the country in 1863, to remain there until they should return, which General Banks said would be in forty days. On several occasions between May, 1863, and March, 1864, I was compelled to work on rebel steamers as pilot, or be conscripted and go into their army. The last trip I made for them was in the month of March, 1864.

4. Where did you reside when the rebellion broke out? If you answer in the southern confederacy, state at what particular
143 place, and what you were then engaged at. What part did you take, if any, in the rebellion? What were your sentiments with respect to the rebellion? What have they been throughout, and what did you do to aid the rebellion, if any thing? and what did you do to aid the cause of the United States? State all the particulars, giving time and place, and the names of persons who were cognizant of your position and war acts in that behalf.

Ans. At the breaking out of the rebellion I was visiting, with my family, at the residence of Dr. R. R. Peebles, in the county of Austin, Texas. I returned to New Orleans in October, 1861, which was my place of residence, until I took my family up Red river, int he spring of 1862. I found it impossible to get out of the southern confederacy with my family; so in April, 1862, I took them on the steamer Homer, up Red river, and resided from that time, up to April, 1864, in the vicinity of Alexandria, La., having rented a plantation there as before stated. I was forced, as before stated, to work in my capacity of steamboat pilot on rebel transports, but
144 never worked on their gunboats; but in no voluntary capacity did I, in any way, aid the rebellion. My sentiments were always strongly opposed to it, and occasionally, I was indiscreet enough to express them so openly as to be threatened with arrest. Once, while at Jefferson, Texas, I was forced to take the oath of al-

legiance to the confederacy, to escape the violence of the mob, and when I met General Banks at Alexandria, in 1863, I reported to him what I had done, and voluntarily then and there took the oath of allegiance to the United States. I also went voluntarily to Admiral Porter, on his flag-ship Benton, then lying off Alexandria, and offered my services in aid of the expedition of 1863. Capt. Winthenbury went to Admiral Porter with me, at that time, and he also offered his services. We spent several hours with Admiral Porter, and, together, gave him all the information in our power, which would be of use to him. We told him of all the peculiarities of Red river, and pointed out all the dangerous localities to navigators un-
145 used to the river; gave him the names and whereabouts of the principal rebels there, both citizens and military; also gave him the names of the most prominent Union men; gave him the names of all the steamboats on the Red and Ouachita rivers, as well as the sentiments of their commanders and crews, and the places where the boats were then secreted. Among the Union men of that region who knew of my sentiments, and the part I took and was willing to take, were J. Madison Wells, since elected lt. governor of Louisiana, Judge M. R. Ariail, a member of the Free State convention, Lucien F. Parker, ex-mayor of Alexandria, General Wm. Bailey, a wealthy planter, Milton M. Rhorer, now residing at Louisville, Kentucky, and several other prominent citizens. On board the gunboat Pittsburg, I met an old friend of mine, and Capt. Withenbury's, in the person of Capt. William Hoel, captain commanding said Pittsburg, and to him I made known my position at that time, May, 1863.

5. If you remained in the southern confederacy after the
146. rebellion broke out, state why you did so. If you had any opportunity to get away from, and did not avail yourself of it, state why you did not do so; state all the particulars fully.

Ans. As before stated, I could not get out of the confederacy with my family, until the time Banks and Porter left there in 1863. I consulted with Admiral Porter about leaving then, telling him that if I went out with him, I must necessarily abandon everything I possessed there, as there were no U. S. transports to carry anything, and if I left my property and effects behind, all would be destroyed by the rebels; and as I had been there so long, and had suffered so much persecution and privation, I preferred waiting there until the expedition should return again, when I would meet him at Alexandria, give him my services again, together with all valuable information I might pick up during his absence. Admiral Porter coincided with me in my view of the case, and advised me to remain and try and protect my property and family, until he should return, when he would give me his protection. This is the reason I did not
147 leave the confederacy then, but had I supposed that near a year would elapse before the return of the United States forces, I would have embraced the first opportunity to make my escape. I had no other opportunity to escape from there.

6. Were you acquainted with the manner of doing business in the quartermaster's department of the southern confederacy, and more

particularly of their mode of impressing steamboats and their officers into their service, and the way in which they paid them for that service? Did they pay them in their government money, or in cotton or other property? Who was the agent for that so-called government for the packing of beef for their army on Red river, and buying cotton? How did he pay boats for the transportation of beef and other property? Look at paper A, and state in whose handwriting it is, and state why you know. State if you know whether that is the form in which A. W. McKee was in the habit of giving title to cotton sold by him, for transportation and other services rendered the department. If Withenbury and Doyle had steamboats
148 in Red river when the rebellion broke out, please state their names and capacity, and what became of them after that event. Were they used by the quartermaster's or other department? If so, how came they to be used? Were they used by the voluntary consent of Withenbury or Doyle? If not, how were they used? State all you know on this subject. How were they paid for, who paid them, in what were they paid? State fully all the particulars.

Ans. I was well acquainted with the mode of doing business by the quartermasters there, so far as steamboats and steamboat-men were concerned. All steamboats within the rebel lines were directly under the military authorities; sometimes ordered by quartermasters and sometimes by officers at different military posts on the route from one place to another, and when so ordered, there was no alternative but to go, always reporting to the quartermasters or commanding generals at the point of destination, who again ordered them to return, or go to other points, as they thought best. I have known one captain Freize, of the steamer Frolic, to be put off from his boat for hesitating to obey these orders, and for being suspected of
149 being a Union man. Capt. Hugh Slicer, also of the steamer Dixie, had his boat taken from him for like reasons. Capt. R. W. Doyle's boat, the Vigo, was taken by the military and used a long time in constructing a raft across Red river, near fort De Russey, Capt. Doyle refusing to remain on her while so employed. All steamboat officers were exempted from service in the ranks while employed on their boats, but if they declined doing duty there they would be conscripted. There were two companies called "Red River Sharp-shooters," made up entirely of steamboat-men, who were required to patrol the river on either bank, during the low-water season. When boats where paid at all for their services, it was in confederate money, or certified accounts, which it was very difficult to collect. Many times I have known owners of boats to go to Richmond for their money, when, on account of some little informality, they were refused the money, and sent back again to Alexandria or Vicksburg, to have their accounts rectified, before they were enabled to get their pay; and often before they could get their money,
150 it would have depreciated 30 to 50 per cent. Many claims for steamboat services have never been paid to my certain knowledge. In several cases I have known payments to be made for these

services in cotton. Capt. Hugh Slicer, of the steamboat Dixie, for removing C. S. A. cotton out of Bayou Macon, to points considered safe from federal raids, received his pay in cotton in exposed localities, (I mean exposed to the federals.) This cotton he took in preference to confederate money, as he hoped to save the cotton at some future time, and the money he counted as worthless. Capt. Slicer was known to me to be a Union man, and not afraid of the federals. It was a custom of the officer in charge of the confederate cotton to pay for its removal by steamboats or teams in cotton. One bale for removing one. I have known Capt. Withenbury and Capt. Doyle, each to remove a good deal of confederate cotton, on the terms stated, bale for bale.

Andrew W. McKee was agent and inspector of the confederate government beef packery, near Alexandria, on Red river, in 1861 and
151 1862. The same man was made chief cotton agent for Louisiana and Texas on the expiration of his duties at the beef packery in the fall of 1862. I have understood that much of the transportation of beef, salt, and cooperage has never yet been paid for. Capt. Withenbury with the Homer and the barge Envoy did the most of that work, or more than any one man. Capt. Doyle, with the Vigo, did a portion of it. They have both told me that McKee had settled with them for all work, including the handling of government cotton, by transferring to them certain lots of cotton on the Red and Ouachita rivers, and I have been told the same in the government cotton office at Alexandria by the clerks in the office and by A. W. McKee himself. The paper marked A is signed by A. W. McKee; I know his handwriting well; have seen him write often. It is in the form in which he was in the habit of drawing orders upon parties holding government cotton. I know the planter upon whom that order was drawn, and I know that 66 bales was burned by the rebels after the Union army arrived, in March, 1864, and was a loss to Withenbury and Doyle.

152 I have stated that Capt'n Withenbury had the steamer Homer; he also had the barge Envoy. Capt. Doyle had the steamer Vigo. The Homer was a good passenger and freight boat of the capacity of 1,400 bales cotton, or 400 tons. The barge was capable of carrying 350 tons; she was in constant use, and when the rebels fled from Alexandria, on the approach of the U. S. gun-boats they set her on fire at the head of the falls, two miles above Alexandria, and she was destroyed. Vigo was capable of carrying 1,100 bales of cotton, and was a good Red river boat. The steamer Homer, Capt. Withenbury left on the Ouachita river, above Monroe, where I was told the confederates had her in transporting corn out of Bayou Bartholomew, and the last I heard of her the newspapers reported her capture by Gen'l Steele, at a point thirty miles below Camden, Arkansas. The Vigo, at the last accounts I had of her, was somewhere near Shrevesport on Red river in the hands of the confederates. As I have before stated, these boats were used principally after the breaking out of the rebellion by the confederate authorities, sometimes by the quartermasters and sometimes by the beef and cotton agent, McKee.

153 Capt. Withenbury often expressed to me a wish for an opportunity to escape with his boats to the Union lines; but as he could not to do so, he would submit and do the best he could. Capt. Doyle I know to be a Union man, but I had not as frequent conversations with him about his boat affairs as I had with Capt. Withenbury, as I was not so much with him; but I know when he went to New Orleans in January, 1864, that he went for the purpose of making arrangements to save and get out the cotton which he and Capt. Withenbury had received for their services.

7. Have you ever heard of the Simmons cotton, raised on the Tatum and Simmons plantation on the Ouachita river, near Monroe, Louisiana, the number of bales, and how they were marked? Do you know to whom Simmons sold this cotton, the time when, and the consideration? Do you know whether this cotton was sold to Withenbury and Doyle? If so, who sold it to them, and when was it, and the consideration of the sale? Have you seen this cotton? If so, where?

154 Ans. I was told by A. W. McKee, cotton agent aforesaid at Alexandria, that the Tatum and Simmons cotton, 935 bales, raised on the Ouachita river and stored on Simmons's plantation, he had transferred to Withenbury and Doyle in payment for their services and the services of their boats, and that he had paid other parties for other services in a like manner. One Dr. R. A. Porter, who had a large amount of hides taken from him by the confederate authorities, while he was in New Orleons, he paid him in cotton also. I know from the report of clerks in the cotton office at Alexandria that Dr. Simmons sold to the Confederate States agent 935 bales of cotton, a part of which was marked Simmons and a part Tatum and Simmons. I have seen it on the list of government cotton in said office. I have also seen a list of cotton transferred by A. W. HcKee to Withenbury and Doyle in the handwriting of A. Rachel, one of the clerks in McKee's office, and the Simmons and Tatum and Simmons lot, 935 bales, was a part of that list, and the lot referred to in paper marked A was also on the same list. This list is attached to my deposition, marked A.

155 I was at Alexandria in the spring of 1864 when a portion of Admiral Porter's fleet, under command of Capt. Foster, of the gunboat Lafayette, started for the Ouachita river, and I heard the chief clerk in the cotton office say he wondered why Withenbury and Doyle did not go along and try and save their Simmons cotton, as this would be a good opportunity. I am not certain that either Withenbury and Doyle knew of the destination of Capt. Foster and his boats, as I do not remember hearing them say anything about it then; but not very long after, I heard Capt. Withenbury tell Admiral Porter that he owned this Simmons cotton on the Ouachita, as well as some cotton higher up that river, and Admiral Porter promised him assistance to get it out, and told him that as soon as he could spare a gunboat from his fleet he would give him convoy to go with a transport to get his cotton. Not long after this we heard the expedition under Capt. Foster had carried the Simmons cotton from the Ouachita and that it was gone to Cairo. After Capt. Withenbury had heard of this

cotton being taken by the U. S. gunboats and sent to Cairo, he went on board Admiral Porter's flag-ship and showed him McKee's bill of sale or transfer of the Simmons cotton, together with other
156 papers concerning other lots of cotton which had been transferred to him and Doyle in like manner as the Simmons cotton had been by A. W. McKee. He told Admiral Porter that he had been informed that the Simmons cotton had been carried off by his boats, and he asked him to give him an order on the navy officer at Cairo for said cotton. Admiral Porter replied that he had as yet no report from the Ouachita expedition, and could take no action in the matter until he should have Capt. Foster's report of the doings of the expedition; but he at the same time gave Capt. Withenbury the assurance that if it proved true that any of his cotton had been taken, it was lucky for him, as he would certainly get it or the proceeds of it. I was with Capt. Withenbury during this interview and heard the conversation as above stated. I was in the employ of the U. S. navy as pilot, as was Capt. Withenbury also, during the whole time from the 16th of March, 1864, to 28th April, 1864, and left without any settlement, as I was in bad health, and everything pertaining to the army and navy was in great confusion at Alexandria about
157 that time. I remained in New Orleans recruiting my health until about the first of June, 1864, when, in company with Capt'ns Withenbury and Doyle, I went north. We went to Cairo to see Admiral Porter, when he paid me $360 on account of my services as pilot as above. While at Cairo we heard there was to be a sale of prize cotton on the following day, viz, June 22d, and we went to look at the cotton. Capt. Withenbury found quite a number of bales of cotton marked "Tatum & Simmons," and he called my attention to it, and asked me to look over the entire pile of cotton and help him to identify as much as possible of this particular lot. He found the clerk of the cotton press, and yard and asked how many bales of the Tatum & Simmons cotton had been brought up, and the clerk answered that about 800 bales had been brought, but that Mr. Halliday, of Cairo, had been allowed to take 215 bales out of the lot to make up for some of his cotton which had been sold as prize cotton before he had returned home from Red river. The clerk also stated to Capt. Withenbury that there was over 500 bales of the same cotton to be sold to-morrow, June 22d. On the same day, in conversa-
158 tion with Mr. W. P. Halliday, he showed me and Capt. Withenbury a memorandum book in which he had entered a list of 215 bales of the Tatum & Simmons, cotton, with the weight of each bale, and he told the same story which the clerk in the cotton yard told us about its being substituted by consent of Admiral Porter to make up for 215 bales taken from the Neal plantation by the gunboats, three or four miles below Alexandria, which had been sold as prize cotton before he had got home. On the 20th day of June Capt. Withenbury, Capt. Doyle, and myself went on board Admiral Porter's flag-ship Black Hawk, at Mound City, Illinois, when Capt. Withenbury asked the admiral if he could not do something for him to assist him in getting the Simmons cotton which was not yet sold. Admiral Porter an-

swered him that the whole matter was out of his hands, as it had been handed over to the U.S. marshal, and must now go through the courts; tha were it in his power to do so, he would give it up to him; that he was satisfied that he and Capt. Doyle were entitled to it, and ought
159 to have it; that so far as he was concerned he did not care a straw for it. As we were leaving the Black Hawk, Admiral Porter bid us good-bye, and repeated to Capt Withenbury his wish that he might succeed in getting his pay for the cotton. Capt. Withenbury, while on the Black Hawk, made an affidavit to the fact of Dr. Simmons having sold his cotton, 935 bales, to the Confederate States. This affidavit was made at Admiral Porter's request.

8. If you were present at Alexandria, Louisiana, when the United States army and navy, under the command of Major General Banks and Admiral Porter, visited that country, 1863 and 1864, please state what course Capt. W. W. Withenbury and Capt. R. W. Doyle took towards aiding our forces in that enterprise. What did they say and do? State all you know fully. In this connexion look at paper B, and say what you know of it; whose signatures does it bear? and how came it to be issued?

Ans. I have already stated that I was present at Alexandria, La., when the U. S. army and navy, under command of Maj. Gen'l
160 Banks and Admiral Porter, held that country, both in 1863 and 1864. I went with Capt. Withenbury to see Gen'l Banks, in 1863, in his private room in the "Ice-house" hotel, when Gen'l Banks asked Capt. Withenbury a great many questions concerning the river, the country, and the people, and I know that, in answering all of these questions, Capt. Withenbury, gave correct answers, thereby giving General Banks much valuable information. We consulted together over maps, which General Banks had in his room, correcting some errors, and giving general information of the country and river. Gen'l Banks told Capt. Withenbury that his name had been given to him as one who could and would be of much service to him. Capt. Withenbury assured Gen'l Banks that he had more than 20 years experience in Red river, and that he would willingly impart to him all his knowledge of the country and river in aid of the Union cause, and would go with the army or navy as he could best serve the interests of the expedition; but that if the army should not continue to hold the country, he (Withenbury) de-
161 sired to go beyond the lines as soon as possible, in order to protect, as far as possible, his various interests in the country. He stated to Gen'l Banks that he had many debts due him by the people, as well as by the government, and also considerable cotton lying at different points, all of which he would lose, if it could be proven that he had favored the Union cause. While the army was there, he stated to Gen'l Banks, his family were at Cincinnati and wholly dependent upon his success in saving the fruits of many years' labor, all of which was scattered through the confederacy. During one of these interviews, Dr. Hugh Kennedy, of New Orleans, was present, and gave Gen'l Banks the assurance that he could rely upon all Capt. Withenbury told him. Capt. Withenbury

and myself promised Gen'l Banks that we would meet him at any future time when he should visit that country, but for the present we did not feel like abandoning our property, if there was any possibility of saving it by remaining. My rented plantation was a little
162 outside of the federal lines, and at the close of this interview Gen'l Banks gave us each a pass to go "through the lines," when we left here, and did not see him again until March, 1864. Capt. Doyle was at Shreveport in the spring of 1863, and was not present at the interviews I have mentioned. As early as the first day of January, 1864, we heard, through our Union friends, that another expedition was being organized in New Orleans under Gen'l Banks and Admiral Porter, and Capt. Withenbury, and myself, and Capt. Doyle consulted together as to the best mode of protecting our interests and making our escape from the country in case the Union forces did not hold it. Capt. Doyle started for New Orleans on the 7th day of January, 1864, leaving the impression behind him that he had gone to Houston, Texas. After his arrival in New Orleans, Capt. Withenbury got letters from him, and we were thus advised correctly of the movements of the expedition. Capt. Doyle came to Alexandria with Gen'l Banks in the transport Black Hawk, which
163 arrived about a week after the gunboats, under Admiral Porter, and a portion of the army, under Gen'l A. J. Smith, had arrived and taken possession of the river and country as far as Alexandria. Capt. Withenbury and myself lost no time in visiting Admiral Porter and renewing our offers of services, which were at once accepted. We commenced immediately giving instructions to the pilots on the fleet. Every one of them at that time were strangers to the river. We assisted in piloting the gunboats over the falls, also some of the transports, and continued as long as our services were needed. I have examined paper marked B; I saw Admiral Porter write and sign it. He did this without Capt. Withenbury asking him for it. He also gave me the same kind of document at the same time, which I left with my family for their protection, while I was absent on the river.

9. State what means you had of knowing the sentiments of both Withenbury and Doyle, in respect to this rebellion, and their course all the while they were within the rebel lines. State all the facts fully.

164 Ans. I have already stated that I was very intimate with Capts. Withenbury and Doyle, and that we often conversed confidentially together, and I knew them both to be true, good, and loyal Union men, and I know that neither of them, nor myself would have remained in the rebel lines a single day, except for the reasons already given; and I know that both Capt. Withenbury and Capt. Doyle have made great sacrifices of property in leaving the country when they did.

10. State what advice General Banks gave Withenbury as to his remaining at Alexandria, after General Banks left there in 1863; state all the particulars fully.

Ans. I have already stated at length, in my answer to the 8th in-

terrogatory, all that passed in my presence between Gen'l Banks and Capt. Withenbury. Gen'l Banks approved of Withenbury's plan of staying in the country to protect his property, and continue to gain what information he could, and be ready to meet him on his return, which he thought would be in forty days.

11. Do you know of any attempt to punish Capt. Withen-
165 bury because of his supposed Union sentiments? State the particulars.

Ans. Early in the month of April, 1862, there was public meeting of citizens at the mouth of Loggy Bayou, on Red river, where it seemed Capt. Withenbury had said something which led the people to suspect him of being unfavorable to the confederacy and the rebel cause, and they passed resolutions denouncing him as a Union man, and one who ought not to be allowed to run at large in the country. They sent a copy of said resolution to the Shreveport paper for publication, and also a copy to the New Orleans papers, and he was accordingly so published in both places. This was a short time before the capture of New Orleans. A mob armed with guns and knives had collected at the same point, and met Capt. Withenbury on his way down the river, when they threatened him with violence, and it was by extraordinary good management and nice talking that he escaped. They accused of him of urging the people, in the event of New Orleans being taken, to immediately open trade with
166 the federals, assuring them that nothing would be taken from them without a just compensation; that such a course had been pursued by the Union army wherever they had gone thus far, and that he believed that the same course would be pursued here. All of this he did say to them in my hearing, and for this they met together to hang him. He also advised them to continue the culture of cotton, which advice they construed to be treason.

Paper marked A, referred to in the deposition of John M. Martin.

OFFICE COTTON AGENCY,
Alexandria, La., Jan'y 6, 1864.

Mr. W. L. Sanford, Bayou Rapides, near Alexandria:

Deliver to Withenbury & Doyle, or order, (56) fifty-six bales of cotton marked "W. L. S.," weighing 27,381 pounds, as per your certificate of sale to me for account of Confederate States.

A. W. McKEE,
C. S. Gen'l Agent to purchase Cotton in Louisiana.

Indorsement: Deliver the within cotton to J. H. McKee or order.
WITHENBURY & DOYLE.

167 *Paper marked B, referred to in the deposition of John M. Martin.*

U. S. MISSISSIPPI SQUADRON,
Flag-ship Black Hawk, March 16, 1864.

To whom it may concern:

W. W. Withenbury having taken no part in this rebellion against the United States government, and having afforded no aid or assist-

ance to the rebels, military and naval officers are requested to give W. W. Withenbury's property such protection as lies in their power so to do.

DAVID. D. PORTER,
Rear-Admiral, Com'd'g Miss. Squadron.

H'DQ'RS RED RIVER EXPEDITION,
Alexandria, La., March 21, '64.

Guards and pickets will pass and repass W'n W. W. Withenbury through the lines until further orders.

A. J. SMITH, *Brig. Gen'l, Com'd'g.*

Filed Dec. 24, 1864.

GEO. P. BOWEN, *Clerk.*

168 Deposition of Andrew W. McKee, in behalf of Withenbury & Doyle, taken before George P. Bowen, United States commissioner, at his office in Springfield, Illinois, on the 10th day of June, A. D. 1865.

Interrogatory 1st. State your business for the past four (4) years, and where did you reside during that time?

1st answer. For the past four years I have been engaged in attending to my own private affairs, merchandising, attending to interests in lands, cotton, &c., and acting in civil positions for the so-called confederate gov't. During said period I resided in Texas and Louisiana, mostly in Louisiana, in Rapides parish.

Int. 2d. If you had any official connexion with the so-called confederate government, state what that connexion was, its duties, your powers and authority, and from whence they were derived. If you answer that you held two or more official stations, state what they were, the extent of duties discharged in each, and more particularly your mode of payment, whether in currency or property, and
169 your authority for the paying it out. Be particular and full?

2d answer. I held at different times two official positions in the service of the so-called confederate gov't. The first began in September, 1861, when I was appointed an agent of the commissary dep't, reporting to Col. L. B. Northrup, G. C. S., at Richmond, Va., by whom I was instructed to receive in West Louisiana, from different contractors, a large number of Texas beeves; pay for the same; locate and establish a beef packery near Alexandria, on Red river; kill and pack whatever No. of beeves the cold weather of a southern winter would admit; any beeves not killed to be herded and taken care of for army use the following summer. All this was accomplished and ended in September, 1862, when I went to Richmond to make my report and settle my accounts. All my disbursements so far were in C. S. currency and bonds, but as a sufficient amount of same was not furnished me, I was obliged to put off in part some debts due by me on account of the so-called Confederate States. When in Richmond, in fall of 1862, at the request of Mr. C. G. Memminger, sec't'y of the

treasury, C. S., I resigned my agency for the commissary
170 dep't, and accepted from the treasury dep't of the so-called Confederate States, in October, 1862, the appointment as gen'l agent of the treasury dep't, to purchase and dispose of and take care of cotton in the States of Texas and West Louisiana—that is, all of Louisiana lying west of the Mississippi river. My first original instructions were, in substance, that the cotton should be purchased if possible all for Confederate States coupon bonds, but where the seller urgently needed currency, I was allowed to pay ($\frac{1}{4}$) one-fourth of the amount in currency. The cotton was originally purchased to assist in carrying out certain financial schemes of the treasury dep't in Europe, and was to be held intact so long as it was safe from raids of the U. S. armies.

Int. 3. If you, as an officer of the so-called confederate government, purchased any cotton of Tatum and Simmons, or either of them, lying on the Ouachita river, state all the particulars of that purchase. What did you buy? How many bales or pounds? When did you buy? What did you pay for it? How much per pound? Was it weighed?
Was it baled ready for shipment? Was it delivered to you or
171 your agent? If so, how was it delivered? By what taken? Was it set apart and marked? If so, how was it marked? Was any act done to complete the sale and purchase, so as to pass the title from the seller to you or your employers? Was you at liberty to move it from its location at any time without the consent of the seller? In whose charge or custody did you leave the cotton after you took possession of it, and what was he to do with it? If you took any bill of sale of the cotton, or other written evidence of title, please annex it or a copy of it. If you took any warehouse or other receipt for it, who made it? If you can, annex it or a copy of it. In what way and in what time did you pay for it? Give the particulars.

3d ans. Through my sub-agent, Dr. C. G. Young, of Monroe, La., I purchased from Dr. J. T. Simmons (935) nine hundred and thirty-five bales of cotton, lying upon his plantations upon Ouachita river, below Monroe. It was in two lots, or designated by two marks, the bulk of the lot marked "Tatum & Simmons, C. S. A.," and the smaller portion "Simmons, C. S. A." I cannot recollect exactly the number of pounds—it was (385,000 lbs.) three hundred and eighty-five thou-
sand pounds. My instructions to sub-agents were, that in every
172 instance in purchasing cotton, each bale must be separately weighed, distinctly marked with the usual shipping mark of the seller, with C. S. A below, carefully put away by itself, under good shelter, there to remain subject to the order of the sect'y of the treasury or myself, as gen'l agent. Dr. C. G. Young reported to me officially, and afterwards personally and privately, that above instructions were fully carried out in reference to the Simmons crop of cotton, as it was a large and valuable crop of cotton, and among the first purchases which he has been able to make, in which the seller at sold to the Confederate States all and every pound of cotton upon his plantation; this was subsequently confirmed to me by one of my travelling sub-agents, whose business it was to investigate the

condition and proper care and shelter which the sellers (who in almost all instances remained the custodians of the cotton sold to the so-called Confederate States) continued to give to cotton left by agreement in certificate of sale to C. S., in their custody and keeping; this was in the month of August, 1863. No act was left undone to pass the title of cotton from any seller to the so-called Confederate States. I could remove the cotton when I pleased, by order,
173 nor had the seller the least control over it except to take as good care of it as if it was his own, and deliver it whenever called for by the order of the sect'y of the treasury or myself. In purchasing cotton for account of so-called Confederate States, certificate of sales were taken in duplicate, upon partially printed forms, furnished me from Richmond, printed upon good foolscap or same size paper, with blank places for the detailed weights, marks, number of bales, price, amount, &c.; also seller's name for receipt of payment, and agreement to remain the custodian, and deliver the cotton when drawn for in good shipping order, at his own expense, at his usual shipping point, &c.; also place for certificate and signature of sub agent or myself. It was considered very full and complete, being bill of sale, receipt for payment, and more fully binding upon the seller, as custodian and as to prompt delivery of the cotton, than the common form of a warehouse or storage receipt. I have none of these forms of certificates with me. At the time Dr. J. T. Simmons sold his cotton as above to my sub-agent, Dr. C. G. Young, in November or December, 1862, we were nearly out of bonds and money to pay for same. He (Simmons) agreed to wait a reasonable time until I would be in receipt of
174 more funds from Richmond. which, not arriving at the expected time, and Dr. Simmons being verious anxious to remove his negroes and stock to Texas, for fear of a federal raid, I did consent, at the urgent solicitation of said C. G. Young, to allow Dr. J. T. Simmons, on behalf of himself and several of his neighbors, to go direct to Richmond, for immediate payment, and for this purpose authorized my sub-agent, Dr. C. G. Young, to give J. T. Simmons, and the other parties, drafts upon Mr. C. G. Memminger, sect'y of the treasury, C. S., and to forward at same time one of the certificates of sale given by each party who received a draft in this manner. It was done, and Dr. J. T. Simmons went to Richmond, and was there paid in full for his cotton, in eight per cent. coupon bonds, of the so-called Confederate States. I cannot recollect the precise amount, but know that it is between ($46 and $49,000) forty-six and forty-nine thousand dollars. In this purchase from Dr. J. T. Simmons, every act was done by him and my agents, in weighing, marking, delivering, receiving back on storage, &c., that was necessary to fully pass the title of said 935 bales of cotton from J. T. Simmons to the so-called Confederate States; the exact weight of said 935 bales cotton
175 sold by Simmons is correctly stated and shown in my bill of sale to Messrs. Withenbury & Doyle.

Interrogatory 4. If you sold that Tatum and Simmons cotton, or any of it, to whom did you sell it? What did you sell it for? In what way was it paid for? How did you deliver it? What evidence of title

did you give, and what authority had you to sell it? Give the date of sale, date of delivery, the place of delivery, and the price paid per pound for the cotton; the weights; and all other particulars that will enable the court to understand the entire transaction.

Answer 4th. After the fall of Vicksburg and Port Hudson it became apparent to the sec't'y of the treasury at Richmond that the lower Red river and Ouachita valley were no longer safe localities to store and hold cotton for account of the so called Confederate States, and in July and August, 1863, I received new instructions advising me to remove as far as possible all the gov't cotton in above-mentioned localities to the State of Texas before the water would rise the following winter, when a federal raid was anticipated; and if,
176 in view of the depreciation of C. S. currency, it would further the work, to pay for the service "in kind," that is, pay in cotton in exposed localities, for the transportation of cotton, bale for bale, or such ratio as I might determine, according to the time and distance required to do the work. I was also authorized, where I believed that I could not remove the cotton in time, to pay it over for debts due to any parties from the so-called Confederate States other than upon treasury dep't account, if the parties receiving the same could satisfy me that they would be allowed by the federal military authorities protection for same and permit to export, to the end that any cotton so paid would not be confiscated to the U. S. gov't; otherwise, I was positively instructed to destroy by burning any and all cotton not removed or sold and protected as above, as soon as the federal forces invaded my district. In the latter part of August, 1863, W. W. Withenbury and R. W. Doyle came to me jointly, and applied to me for payment of their accounts for past services required from their steamboats Homer and Vigo, and to ask my advice as to what they should do for the future to avoid military service, and save for themselves the labor of years. I promptly in-
177 formed them that I was aware that their names were upon the list of the enrolling officer; that they were liable any hour to conscription, but that if they could accept a contract to transport cotton from the Red to the Sabine river, that I would pay them in cotton a liberal price, and in addition would pay them all back dues coming to them from the so-called Confederate States. They asked until the next day to determine, when W. W. Withenbury informed me confidentially the result of his agreement with Gen'l N. P. Banks in May, 1863, to the effect that he (Withenbury) should remain within the confederate lines to save his property, and be better prepared to render information and aid to Gen'l Banks upon the return of the federal forces; and stated that, under the circumstances, they would accept a contract to move cotton, which would relieve them (Withenbury and Doyle) from military service, and keep them in the neighborhood of Alexandria, provided I would retain, hold, and keep intact certain lots of cotton lying upon the Red and Ouachita rivers for their benefit for past services and for services to be performed under the proposed contract, but which cottons were not to be finally
178 exempted from burning until they furnished me satisfactory

evidence from Gen'l Banks that they would be protected, and permitted to export the same to New Orleans. Prominent among the said lots were the (418) four hundred and eighteen bales of C. S. cotton at Miller's Bluff, on the Ouachita, and the Simmons sale of cotton, (935) nine hundred and thirty-five bales of cotton, on same river, below Monroe, La. To this proposition I fully assented and agreed; took from my general lot of vouchers or certificates of cotton purchased, the certificates given by Dr. J. T. Simmons and Jas. Hewitt referring to above-mentioned lots of cotton, and placed them in my private desk, not accessible to my sub-agents or clerks; I subsequently, say in the early part of January, 1864, did sell, transfer, and deliver to Messrs. Withenbury & Doyle certain lots of cotton upon the lower Red river, and the entire lots of cotton sold by Dr. J. T. Simmons upon the Ouachita river, say (935) nine hundred and thirty-five bales, as noted above, I reserving the right, under my instructions from Richmond, to destroy the same, if they failed to
179 satisfy me that they (Withenbury & Doyle) would be permitted by Gen'l Banks to export the same. R. W. Doyle then requested my assistance to enable him to pass the confederate lines to New Orleans to obtain the aforesaid protection and permit. I gave him a letter to Brig. Gen'l W. R. Scurry, C. S. A., then commanding the outposts upon the Atchafalaya river, upon which letter Gen'l Scurry passed him through the lines. At same time I informed Doyle that about 1st March, 1864, I would, upon official business, be in Point Coupee parish, La., where, if he could arrange his business with Gen'l Banks, he could meet me at or in the neighborhood of the house of my relative, Mrs. Emily McIntyre, on Bayou Letzworsh. On the 4th, 5th, or 6th day of March, 1864, R. W. Doyle did find me in Point Coupee parish, and in presence of Edward Fulton, John H. McKee, and Martin Rabalais, exhibited to me a document giving protection and permission to Withenbury & Doyle to bring to New Orleans and sell (?,500) twenty-five hundred bales of cotton. This document was signed by Col. S. B. Holabird, A. D. C., and chief quartermaster of dep't of the gulf, and approved by
180 Maj. Gen'l N. P. Banks, commanding dep't of the gulf. I know these signatures to be genuine. The price for the cotton sold to Withenbury & Doyle was bale for bale for all transported under their contract, ($50) fifty dollars per bale for amount due upon previous services. The cotton so paid them, and all which was transported by them, would have been destroyed by burning had they failed to have executed their contract. I immediately sent orders to my sub-agent on the Ouachita not to burn the Simmons crops of cotton.

Int'y 5th. If you are acquainted with Capt. W. W. Withenbury and Capt. Ross W. Doyle, state when you knew them first, where, and your opportunity since to know them.

Ans. 5th. I have known W. W. Withenbury intimately for four years; was introduced by mutual friends; since when he has been more or less almost constantly in my neighborhood and employment. I have known R. W. Doyle from boyhood, he being from Steuben-

ville, Ohio, and I from Wheeling, Va., only twenty miles distant; been very intimate with him since the rebellion broke out, he frequently advising with me about his business.

181 Int'y 6th. If you know, please say what connexion they or either of them had with the so-called confederate government. Was that connexion voluntarily or involuntary? If you know their political sentiments, please say what they were towards the government of the United States during all the time you knew them. If you knew them within the lines of the so called confederate government, please say under what circumstances they came to be there. Were they voluntarily or involuntarily? What opportunity had they to escape? What do you know of their desire to escape? If they did escape, what knowledge had you of the fact? State all you know about it.

Ans. 6th. At the breaking out of the war, Withenbury and Doyle both owned and commanded steamboats in the Red river trade; they, in common with all other steamboat owners, were compelled to do service for the so-called Confederate States, or have their property forcibly taken from them and themselves conscripted and placed in the army. I do know the fact that they were opposed to secession, but on the contrary were, from first to last, strong Union men.

182 To my knowledge, they laid many plans to get their property protected and get themselves into the federal lines, which, however, was a very difficult matter, owing to the very severe conscript and detective system established by the so-called Confederate States. I have said above how R. W. Doyle escaped. W. W. Withenbury escaped by my hiding him upon the Richland plantation near Alexandria, when the federal forces were advancing in March, 1864.

Int'y 7. Having already called your attention to your authority to sell cotton, claimed to belong to the so-called confederate government, I will thank you to state whether there was any other authority within your territory authorized and empowered to sell or trade the cotton purchased by you, in your official capacity, who constituted that authority, and whence came the power. Give all particulars.

Ans. 7th. I have already stated in a previous answer my authority to purchase, hold, and dispose of C. S. cotton; there never was any other authority (up to the time that my successor in office was

183 appointed, say in August, 1864) but myself, as the general agent, or the sect'y of the treasury at Richmond, who could lawfully control, sell, or otherwise dispose of any cotton purchased for account of the treasury dep't of the so-called Confederate States, in the district of west Louisiana.

Int'y 8th. Please state all the circumstances which led to your being employed by the so-called confederate government in the several capacities you have named. What were your sentiments towards the government of the United States when the rebellion broke out? And had you occasion to change them afterwards? If so, state what the change was.

Ans. 8th. I have already stated how I came to be employed by the so-called Confederate States. I had but two alternatives, either to

shoulder a musket and enter the army, or accept some civil service. I did so, fully believing the war would not last long, and I would be enabled to save my property. Soon after, the conscription laws
184 were enforced, when I could not get away without great risk in person and family, and loss of all my interests. My feelings and sentiments after the first battle of Manassas, '61, were for the Union. Up to that time I believed that the north would find it their interest to let the south go in peace, and that no real war could occur between the north and south. Finding my error, I at heart returned to the Union cause. My parents and all blood relations live in the northern States.

Int'y 9th. Can you state what L't Col. Broadwell, General Kirby Smith's cotton agent, was authorized to do as such agent? What did he recommend or approve in reference to the claim of Withenbury & Doyle, and its payment in cotton? What cotton was specially named by him? Where was that?

Answer 9th. In August, 1863, Gen'l E. Kirby Smith assumed to establish a "military cotton bureau," and directed all agents of the treasury dep't connected with cotton purchases, to report to his chief of cotton bureau, one L't Col. W. A. Broadwell, the main
185 object it being understood being to render military aid in preserving or removing the C. S. gov't cotton. Distrusting the motives of the military authorities, I declined to report to said L't Col. Broadwell, further than I needed assistance in the preservation or removal of gov't cotton, until I could receive upon this subject additional instructions from the sec't'y of the treasury at Richmond. I reported the facts fully to Richmond, and in return received full instructions, approving of my course, directing me to continue my agency as before, and look only to the "cotton bureau" established by Gen'l E. Kirby Smith for assistance, as to safety of localities wherein to purchase, the removal of cotton, or its destruction, in case of danger of capture by U. S. forces. Also that if the war dep't needed cotton for army purposes, they could purchase the same through their own agents or quartermasters; that I, as agent of the treasury dep't, was not allowed to purchase cotton for the war dep't. Before hearing from Richmond, and when Withenbury & Doyle had concluded to accept the contract referred to, answer No. 4, and not knowing how far the action of Gen'l E. Kirby Smith and his
186 chief of "cotton bureau" might be approved at Richmond, I advised Withenbury, after our conversation referred to in answer 4, to first make a written proposition, agreeably to our conversation, to L't Col. Broadwell, who would most likely agree to it, and, after approval of Gen'l E. Kirbey Smith, would doubtless refer the matter to me for execution. If I could thus make it appear the doings of L't Col. Broadwell, it would save me from increased censure and blame on account of Withenbury and Doyle: this was done; the proposition and draught of contract drawn by L't Col. Broadwell, who in my presence proposed to Withenbury to secure and accept in part payment the Simmons crops of cotton, on the Ouachita river.

Int'y 10. If you know, please state how Withenbury & Doyle were esteemed by the confederate authorities as to their adhesion to that cause. Did they take any oath to that so-called confederate government? Did they enter that army? If they did not, how came they to escape conscription? If you know, state all the particu-
187 lars.

Ans. 10th. Both Whitenbury and Doyle were esteemed by the confederate authorities as unfriendly to the so-called Confederate States, and I was much and often blamed by them and the citizens generally for giving them employment, and thereby exempting them from military service; I never heard of either of them taking any oath to the Confederate States; neither of them was ever in the confederate army; I have stated in previous answers how they made their escape.

Int'y 11th. State the particulars of your arrest, trial, and final acquittal, your conscription and escape, and the course you pursued at New Orleans, when you reached that city.

Answer 11th. I have already stated, in answer to question 8th, of the formation of a war or military cotton bureau by Gen'l E. Kirby Smith, through which he assumed to control all agents of the treasury dep't, and of my refusing to report, only so far as author-
188 ized to do so from Richmond; Gen. Smith soon began to use cotton purchased by me for the treasury dep't; I protested to Richmond, for which action and many other minor matters in which I refused to obey his arbitrary orders, and for many rumors which were carried to him in reference to my being unfriendly to the so-called confederate cause, among other reasons that I had refused to burn public and private cotton, had caused the desertion of Wm. Bailey, (my father-in-law,) W. W. Withenbury, R. W. Doyle, M. M. Rhorer, Adolph Rachel, and Miles N. Carpenter, and had held correspondence with the federal enemy, through parties residing outside of the confederate lines—for these and many other charges, I was arrested and imprisoned on the 12th day of May, 1864, by order of Gen'l E. Kirby Smith, was tried before a military court-martial in Alexandria, La., in July and August, which court, notwithstanding I protested to their jurisdiction, found me guilty, and I was, on the 17th of August, sentenced to be shot to death. Upon the day fixed for my
189 execution, I was saved upon a writ of habeas corpus issued by the Hon. Judge E. Warren Mosse, C. S. district judge for State of Louisiana, who, upon a full hearing upon the question of jurisdiction as to whether I was (for any alleged offence) answerable to military or civil law, the decision was in my favor upon every point, in which also Gen'l E. Kirby Smith was severely rebuked for assuming to control agents or property belonging to the treasury dep't. Failing to murder me thus, Gen'ls E. Smith, S. B. Buckner, and J. G. Walker influenced charges for treason against me against the so-called Confederate States, before the C. S. dist. court, which resulted in my being brought to trial in Natchitoches, La., 20th March, 1865. On 13th of April following I was acquitted, but immediately arrested at the door of the court-house, by order of Gen'l Buckner, closely

confined for two weeks more, then conscripted, and sent, while sick, under guard to the camp of the 18th La. inf't'y. As soon as I was able to walk, and before doing any duty, I deserted and safely reached New Orleans. I was imprisoned and most harshly
190 treated for 11 months, and for nearly 7 months of which time heavily ironed. I was received in New Orleans in the most friendly manner by Gen'ls Banks and Canby, was tendered and promptly took the general amnesty oath issued in the proclamation of his excellency President A. Lincoln, in December, 1863.

Int'y 7th. What interest, if any, have you in the claim asserted in this cause by Withenbury and Doyle.

Ans. 12th. I have no interest whatever in the result of this suit or cause claimed by Withenbury and Doyle.

Int. 13th. What was the course pursued by your department with government cotton, as the federal forces approached it? Speak particularly of cotton in the Ouachita country, near the Simmons plantation.

Ans. 13th. I have already stated that I was instructed to burn all gov't cotton when in danger of a federal raid, and also received mil-
itary orders to burn and treat all private cotton in same man-
191 ner, but after I found in several instances that the federal military authorities in New Orleans and elsewhere on the Mississippi river, would give protection and permission (as in the case of Withenbury and Doyle) to loyal citizens to retain and export their own private property, I, in connexion with other Confederate States officers, did our best to save from destruction all the cotton, both public and private, that we possibly could. In this way many thousands of bales of cotton were saved, which would have been destroyed but for the kind and liberal policy pursued by the military commander of the gulf dep't. I can state positively but for this policy not one hundred bales of cotton would have been found upon the banks of the Ouachita and Red river at the time of the federal invasion, in March, 1864. Sympathy for many Union-loving and loyal U. S. citizens, then within the so-called confederate lines, largely influenced my action in this matter. When the policy in reference to protection of private cotton on the part of the federal authorities became known, as it quickly did, within confederate lines, I was unable
to purchase but very little more cotton for ac't of the so-called
192 Confederate States, as the citizens generally preferred then to hold their cotton, or sell it for U. S. currency, which, under the policy above referred to, had begun to circulate within confederate lines, to the great injury of the C. S. currency and cause, and consequent assistance to the Union cause; it acted as a powerful lever in advancing the Union cause in west La., more so than did *did* any military invasion made in that section by U. S. forces.

Int'y 14th. Look at paper marked Exhibit A, referred to and made part of the deposition of M. M. Rhorer, taken Dec. 14, 1864, at Louisville, Ky., that day by Commissioner Ballard. If you can, say by whom it was made and executed, and whether it is correct.

Ans. 14th. I recognize the paper marked A as an original docu-

ment from my office. It was written by one of my clerks and signed by myself. Upon careful reading of said paper, I discover an error which is not in the copy filed in my office, viz., after the word "value," in the fifth line, the words "of the services," should have been written, and in the sixth line, immediately following the word "same," should be the word "parties;" thus it should read "for the value of the services of their steamers Homer and Vigo, and other services of same parties." This is a clerical omission,
193 which would indicate that I had bought and paid for the steamers Homer and Vigo, which I never did. The consideration was for services.

Cross-examination by Messrs. S. T. Logan and William M. Springer, proctors for G. A. Le More & Co., claimants of 830 bales of cotton:

Cross-interrogatary 1st. When Simmons sold his cotton to the so-called Confederate States, as you allege, what would have been the probable circumstances of a refusal by him to sell his cotton to the so-called confederacy? Would he have been in any danger, either to person or property, from the government authority or from unauthorized bands of citizens? And what was the general opinion as to the safety of those who refused to sell to the so-called confederate government?

Ans. to 1st cross-interrogatory. It was entirely at the option of Dr. J. T. Simmons, or any other seller, whether he sold any cotton to the Confederate States. They could sell or not, just as they
194 pleased; I was not required to and never did make any impressment of cotton. The planters generally in 1862 and 1863 placed but little value upon their cotton, and were anxious to sell it to the so-called Confederate States, to get sufficient money to enable them to remove their slaves and stock to northern Louisiana and Texas. Subsequently, in the fall and winter of 1863; there was considerable ill feeling on the part of the army and those who had previously so sold their cotton to the so-called Confederate States against those parties who had refused, and still continued, to do so. Many persons holding cotton did from the first refuse to sell their cotton to the Confederate States. Beyond the ill feeling referred to, manifested by talking, I never knew any person disturbed or molested or that account.

Cross-interrogatory 2d. What authority had you as agent of the so-called confederate government to sell or transfer cotton belonging to said government? Was such authority conferred on you under printed rules or regulations? and if so, can you produce the same?

195 Answer to 2d cross-interrogatory. I had the fullest authority not in one letter, but in four or five sent to me and signed by Mr. C. G. Memminger, the secretary of the so-called Confederate States—he deriving his authority in the general cotton operations of the so-called Confederate States, by a branch of his department entitled produce loan office, by special act of the so-called confederate congress.

This authority and letters referred to are not in my possession, but are now, or were a short time ago, among the documents and papers forcibly taken from me at the time of my arrest in May, 1864, by order of Gen'l E. Kirby Smith. As I deserted immediately after my acquittal and conscription, I could not bring these papers with me. If not destroyed, they are still in the hands of the so-called Confederate States military authorities.

Cross-interrogatory 3d. Were not Messrs. Withenbury & Doyle paid in full in currency for their services to the confederate government? and if so, why pay them in cotton also?

Ans. to 3d interrogatory. Messrs. Withenbury & Doyle were [redacted] for previous services rendered the Con-

[redacted]

Deposition of [redacted] Withenbury & Doyle, taken before George P. Bowen, United States commissioner, at his office in the city of Springfield, Illinois, on the 13th day of June, A. D. 1865.

Interrogatory 1st. State where you were in the spring of 1861, when the southern rebellion broke out, and your business at that time, afterwards, and up to and including the spring of 1864.

1st answer. I was in New Orleans in the spring of 1861; my business was steamboating from New Orleans to Red river and tributaries up to April, 1863. In May, 1863, when the United States army and navy visited Alexandria, on Red river, I was at that place, and reported myself to Gen'l Banks and Admiral Porter, as
197 ready and willing to assist in that campaign. I had frequent consultations with them, and gave them such advice as I thought would best serve the interests of the U. S. government.

Int'y 2d. State what sentiments you entertained for your government in its efforts to put down that rebellion, and whether you gave that rebellion any voluntary aid or support.

2d answer. My sentiments were always against the rebellion, and I anxiously sought every opportunity to aid the U. S. forces and government in their efforts to suppress it. I was forced, however, to use my steamboat, as I was caught within the rebel lines, and to submit to all orders emanating from the rebel military authorities, and was threatened from time to time with arrest and imprisonment or conscription if I refused. I never rendered the least voluntary assistance to the rebellion, nor had I any sympathy with it.

Int'y 3d. Where did your family reside at that time, previously, and since?

3d answer. My family have resided permanently in the
198 city of Cincinnati, Ohio, more than twenty-five years, and are residing there now. I have owned my own house in that city

for more than 15 years. I never resided in any of the States which seceded.

Int'y 4th. If you owned any property on the Ouachita and Red rivers, please state of what it consisted, and where it was situated, and what became of it.

4th answer. When the rebellion broke out I had a considerable amount of money due me on Red river. I made settlements in many cases and took cotton in payment, leaving it in the custody of planters and warehousemen during the years 1861, 1862, and a part of 1863. I earned a large amount of confederate money for services to private parties, and having no faith in the money, I invested that in cotton both on Red and Ouachita rivers.

[redacted]

lot was at Miller's Bluff, on the Ouachita and consisted of 418 bales. These two lots were the joint property of R. W. Doyle and myself. I owned by myself at Eldorado, on the Ouachita, 90 bales. The cotton which was stored on Simmons's plantation was seized by the United States gunboats and brought to Cairo and sold as prize of war, and to the best of my knowledge all the other cotton belonging to me, or to Doyle and myself, on the Ouachita river has been burned or carried off by the rebels. We have not saved a bale of it. On Red river I owned cotton in common with Capt. Doyle; this was situated in various places from Alexandria to Shreveport, the most of which was burned during the campaign of 1864. We only succeeded in saving 167 bales, which was taken to New Orleans for us on U. States transports by permission and order of Gen'l. Banks, and was there delivered to us upon our paying the government revenue
200 and taxes. This 167 bales was a part of the cotton paid to us by the C. S. agent, A. W. McKee, and was known to be such by Gen'l Banks, who had previously, say in the month of January, 1864, given to my partner, R. W. Doyle, a written protection and permit to carry to New Orleans on U. S. transports all our property, cotton, &c.

This permit was in fulfilment of Gen'l Banks's promise made to me in 1863, in consideration of my services then rendered and to be rendered, to protect so far as possible all my cotton or other property; and in consideration of R. W. Doyle's services, Admiral Porter also promised me like protection in 1863, and in 1864 he gave me a written protection for my person and property, after my explaining to him how this property was obtained, and showing to him the bills of sale for the cotton on the Simmons plantation, which bill of sale is on file in this case as an exhibit appended to M. M. Rhorer's deposition.

Int'y 5th. What protection, if any, did Gen'l Banks and Commo-

dore Porter offer you and your property? If you had any
201 official connexion with either, please state what it was and what service you rendered either.

5th answer. General Banks and Admiral Porter each repeatedly assured me, while on Red river, that all my property and the joint property of myself and Doyle should have the fullest protection in the power of the army and navy to give it. My connexion with both Gen'l Banks and Admiral Porter commenced, as I have stated, in the spring of 1863, and after conference with and by the advice of Gen'l Banks I remained in the Red river country, when the army and navy left in May, 1863, for the siege of Port Hudson, in order to be in readiness to assist them when they should return to occupy that country, and to collect such information of the movements of the enemy as would be useful to the Union forces when they should return. In March, 1864, immediately upon the arrival of the U. S. army and navy, I entered upon the duties of pilot to gunboats and transports, and continued so under service until the 5th of
202 May following; my services were deemed important, as I was a practical Red river and Ouachita pilot of more than twenty years' experience.

Int'y 6th. By what authority, if any, were you running your steamboat when the rebellion broke out?

6th answer. I always run my steamboat by the authority of the U. S. until the custom-house in New Orleans was seized by the rebels, when all steamboatmen there were compelled to take out license from rebel authority. I held my license as pilot from the U. S. inspector.

Int'y 7th. State all the particulars connected with your trip from Alexandria to New Orleans, what papers were lost, and what were saved on that trip.

7th answer. At the very time that the 935 bales of cotton on the Simmons plantation, and the 34 bales on the Maddox plantation, were seized and sent to Cairo by the order of Admiral Porter, I was rendering voluntary and gratuitous services to the navy and
203 army transports. I went to Grand Ecore as a pilot of the transport on which Gen'l Banks had his headquarters, having first obtained Admiral Porter's permission to do so; this was necessary, as I was under orders to report to him daily. Capt'n Doyle was also constantly present and ready to render every service to the campaign, by imparting to Gen'l Banks and Admiral Porter his knowledge of the people, the river, and the situation and spirit of the enemy, which knowledge was the result of his many years' experience in that country, and thorough acquaintance with the people. When the time drew near for the army and navy to evacuate that country, after Gen'l Banks's defeat at the Sabines cross-roads, and his retreat to Alexandria, Admiral Porter advised both Capt. Doyle and myself to try and make our way to N. Orleans on the transport John Warner, which boat was to leave Alexandria on the 4th day of May, 1864, under convoy of two gunboats. Admiral Porter told me distinctly and emphatically not to think of remaining there any longer, as I was

undoubtedly a marked man, having taken so prominent a part with the Union forces in the Red river campaign of 1863 and 1864, and
204 it would not do for me to run the risk of being captured by the rebel forces, who were then close to Alexandria in unknown numbers. He also mentioned to me that he had made preparations for blowing up the eleven iron-clads then lying at the head of the falls, in case the enemy overpowered the U. S. forces before the dam across the river could be finished and the iron-clads be got below the falls. In this last interview with Admiral Porter, which took place on his flag-ship Cricket, on May 4th, Capt'n Doyle was present, and received from Admiral Porter the bill of sale for the 935 bales Simmons cotton, which bill of sale had been left with him, (Admiral Porter,) some days previously, in order that he might examine it and indorse upon it an order to Capt. Pennock, then naval officer at Cairo, to deliver the same cotton to us, if it should prove to have been our cotton, and seized and sent to Cairo. He had promised us that he would make this indorsement, but on this 4th of May he told us that as he had as yet received no report of the doings of the gunboats on the Ouachita river, he would, instead of
205 the indorsement on the bill of sale, write us a letter to Capt. Pennock, which he did then do for us. Said letter is already on file, appended to one of my former statements in this case, filed Dec. 24, 1864. The bill of sale for the Simmons cotton, before alluded to, Capt. Doyle received from Admiral Porter, and put it in his inside coat pocket, while most of our other papers and evidences of ownership of cotton, permits, passes in and out of the lines, &c., were carefully packed in his trunk, and were then on board the John Warner. We took passage on the John Warner, which boat was captured about 30 miles below Alexandria, on the 5th day of May. Both Capt. Doyle and myself made our escape by taking to the woods. I saved a small valise with some letters and papers, but Capt. Doyle's trunk was destroyed with the John Warner, and all that it contained was lost with it, the bill of sale for the Simmons cotton being in his pocket, was not lost. The said bill of sale was filed in this case as an exhibit appended to M. M. Rhorer's deposition, taken at Louisville, Ky., in Dec., 1864. The 34 bales of cotton taken from the Maddox plantation were marked plainly T. H. M., and were
206 never marked C. S. A., unless so marked by the parties belonging to the navy. I saw them mark a good many bales C. S. A., which had never before been so marked. I do not know that they marked any of my cotton in that way.

Int'y 8th. If you have any papers, passes, affidavits, advertisements, orders, &c., received by you when in west Louisiana, relating to these transactions, please append them to the answer to this interrogatory.

Answer 8th. I hereby append a description of all such papers that were in my possession, and I ask that they be read and considered a part of this deposition. They are as follows, viz: A printed order of Maj. Gen'l R. Taylor, C. S. A., No. 193, defining the powers of A. W. McKee to remove cotton and pay for the same, "in kind," marked C.

No. 1. A letter from Admiral Porter to Captain Pennock, at Cairo, on the subject of our claim.

No. 2. Admiral Porter's pass for myself and Captain Martin, certifying that we were employed in the navy dep't, dated April 1st, 1864.

207 No. 3. Admiral Porter's certificate of my loyalty, dated June 18th, 1864.

No. 4. My oath of allegiance dated at Alexandria, La., March 31st, 1864.

No. 5. A copy of John A. Stevenson's letter to J. M. Lapeyre, dated at Shreveport, May 28th, 1864.

All of the above papers, except the printed order marked C, are already appended to my sworn statement filed in this case Dec. 24th, 1864.

Int'y 9th. Please state how far you and Capt. Doyle were personally imperilled, if at all, when the confederates required the use of your boats, or your own services, or those of Capt. Doyle. Give all the particulars.

Ans. 9th. We were in peril of our lives whenever we manifested any disinclination to obey orders from the confederate authorities for the use of our boats. This was also true of all steamboat captains and owners within the rebel lines. On one occasion, in March, 1863, one of my engines broke above Monroe, on the Ouachita river, (the head of the cylinder was broken.) At Monroe, Capt. Birge, C. S. Q. M., ordered me to take on board a large lot of negroes, cattle, mules, and wagons, to work Ft. Beauregard, at Harrisonburg. I re-

208 fused to do the work, on account of my broken machinery. But the negroes, &c. were put on board by soldiers, and after my boat was more than safely loaded, or overloaded, more than one hundred conscripts were added, and I was ordered to start in the night. After getting about four miles down the river, I landed to repair, as we were trying to work a wooden cylinder head, and it worked badly. My engineer decided that we could not go safely in the night, but the capt. of conscripts insisted upon my proceeding without delay, and threatened that if I still refused, he would put me under guard, run the boat himself, (that is, command her,) and deliver me over to the commanding officer at Ft. Beauregard. When I reached Ft. Beauregard, I was ordered to continue down to Port Hudson, on the Mississippi river. At Port Hudson I was ordered by Gen'l Gardner to go to Alexandria, on Red river, (fully 200 miles up stream,) with Gen'l Price and staff. Having there been ordered to go to Camden, on the Ouachita, some 650 miles from Alexandria. I declined, whereupon one Norman White, mate of the rebel gunboat Grand

209 Duke, (a desperate character,) made threats if I did not obey the order, my life would not be worth five cents, and that the first dodge I made would be my last, and some other man would have charge of the Homer. On another occasion the steamer Starlight, Capt. Chas. Hayes, was leaving Alexandria to go down stream against orders; she was fired into by order of military authority, and forced to land. And so all boats were kept constantly under orders by the

rebels. And in low water in the summer, when the boats could not run, all the officers, from the capt. down, were forced to do some other duty. There were two military companies made up exclusively of steamboatmen, called Red River Sharp-shooters, on duty in the low-water season.

Int'y 10th. If you know the comparative value of confederate currency and bonds and gold, in the fall and winter of 1862–'3, please state all you know about it.

Ans. 10th. In the fall of 1862 and winter of 1863 confederate money and coupon bonds were worth in all the country to
210 which I had access, which was Red river, from its mouth to Shreveport, the Ouachita, as high up as Arkadelphia, and the Mississippi, from Port Hudson to Vicksburg, not less than 50 cts. on the dollar, or two for one in gold. I made exchanges occasionally at that rate, but to sell confederate money at a discount was considered by the rebels as evidence of disloyalty, and as I was especially watched, I traded but little in it. 8 per cent. coupon bonds were generally at a little premium over confederate money.

Int'y 11. Had you or Doyle any knowledge whatever, at the time A. W. McKee made you and Doyle the title to the Simmons cotton, of the character of the kind of securities or money which was paid to Simmons by McKee for his cotton?

Ans. 11. I had no knowledge at the time A. W. McKee transferred the Simmons cotton to Doyle and myself how Simmons had been paid for it. I had not then been told what kind of money or securi-
ties had been paid him by McKee, neither did, I up to that,
211 nor for a long time thereafter, hear Capt. Doyle speak on that subject. I don't think he ever gave that matter a thought, or that he ever knew anything about it.

Int'y 12. State what was the consideration for the 935 bales of the Simmons cotton.

Ans. 12th. It was in part payment for services of our steamboats and barges rendered some time before the cotton was given to us. The hard usage of our boats and barges, (one was burned by the rebels, as they could not get it out of the way of the advancing Union forces,) rendered them so near worthless as to be of but little further use to us, even if we could have got them away. This cotton, and the lots before alluded to, were all we got of any value for our services and boats, and we would not have got that, but for the personal friendship and sympathy of A. W. McKee for us. It was a voluntary contribution, or act of justice; not a payment in pursuance of any contract with the confederate government or any agreement before the services were rendered by us and our boats.

Int'y 12th. Look at paper marked W, and state if you know
212 the signature to it.

Ans. 13th. The paper marked W has the genuine signature of Maj. Gen'l N. P. Banks and J. H. McKee. I have seen them both write their names very often, and know their handwriting well. The signature of S. B. Hollabird I have seen to a great many military or Q. M.'s papers, and I would not hesitate to say that his signature is

correctly appended to this paper, and that it is genuine. The body of the paper I believe to be in the handwriting of Gen'l Banks's private secretary.

Int'y 14th. How much, if any, cotton did you realize on the contract referred to by Major McKee, and was it any of the Simmons cotton?

Ans. 14th. I never got any cotton on the contract referred to by McKee.

Papers marked C, referred to in deposition of W. W. Withenbury.

[Special order No. 103.—Extract.]

HEADQUARTERS, DISTICT WESTERN LOUISIANA,
Alexandria, July 31st, 1863.

1. An important service connected with government trans-
213 portation having been confided to the charge of Major A. W. McKee, Q. M., and general agent to purchase cotton, he is hereby directed and authorized to call upon the planters of all the parishes south of and including Natchitoches, for one half of their transportation wagons, mules and oxen, and one negro driver for each wagon. In case of a refusal or attempt at evasion of this order, Maj. A. W. McKee is authorized to impress from such planters all their transportation, or such portion as he may deem proper; also, if deemed necessary, to require planters to state under oath the amount of their transportation. Planters who have at any time furnished more than their quota of transportation to the officers of this department, will, upon producing the proper evidence of the same, be exempted in same proportion in the service now required. As it is determined to defend to the last extreme south and west Louisiana, it is earnestly hoped that the planters one and all will promptly come forward with their transportation to the aid of the government, thereby saving the necessity of impressment of transportation or cotton.

214 Major McKee is authorized to employ such persons as may be necessary to aid them in carrying out his instructions, and furnish such persons as may be of conscript age with an exemption from military duty while actually employed in said government service. For any expenses attending above service, Major McKee will make his requisition upon the chief Q. M. of this department.

By command of—

Major General TAYLOR.

E. SURGETT, *A. A. General.*

Advertisement.—Special notice to Planters.

In compliance with above order, the undersigned now calls upon the planters to send their quota of teams and drivers to the following named agents: In Alexandria, to M. M. Rhorer, office cotton agency; in Natchitoches, office of Messrs. Walmsley & Co.; in Washington, St. Landry parish, office of the post quartermaster, for the purpose of transporting cotton to Niblett's Bluff, on Sabine river,

distant 140 miles from Alexandria, over the new government road. The bridges are all newly built. Grass and water abundant. The price fixed is very liberal, say $10 per 100 lbs., or one bale
215 given here for every bale delivered at Niblett's Bluff to Vondy & Smith, double the rates of last year. Where planters join together and furnish a train-master (white man) to every twelve wagons, he will be paid liberal wages and exempted while so employed from military duty. An agent will be appointed to canvass each parish to see that the above order bears equally upon all. All white men furnishing teams and driving the same will be exempted from military duty while so engaged.

A. W. McKEE,
Quartermaster and General Agent for the Purchase of Cotton.

Filed June 13th, 1865.

GEO. P. BOWEN, *Clerk.*

Paper marked W, referred to in deposition of W. W. Withenbury.

Memorandum of an agreement made this 30th day of January, 1864, between the United States, represented by Colonel S. B. Holabird, chief quartermaster of the department of the gulf of the first part, and J. H. McKee, of the city of New Orleans, of the second part, witnesseth: That whereas there is in the States of Louisiana and
216 Texas a large amount of cotton belonging to the so-called Confederate States government, which cotton is in great danger of being burned by the Confederate States cotton agents and military authorities, in the event of the United States forces marching into the country where the same is collected and stored;

And whereas the said J. H. McKee believes he can prevent the destruction of a great part, if not the whole, of said cotton: Now, therefore, the party of the first part hereby agrees, in consideration of the efforts of the said party of the second part to save the said cotton, and have it delivered over to the military forces of the United States, to pay to the said party of the second part, or to his agent, J. H. McKee, of New Orleans, the sum of eighteen cents per pound on every pound of said cotton which the said military forces of the United States may get into their possession in said States aforesaid; and in order to prevent the application of any portion of the sum of eighteen cents per pound to the uses of the confederate government, or to purposes hostile to the goverment, it is further agreed
217 that the said sum of eighteen cents per pound for all cotton sold by the government of the United States under this agreement, shall be deposited in the Bank of New Orleans, subject only to the joint order of the chief quartermaster of the department and the said Agent McKee, until satisfactory assurances and guarantees are given that it is not to be used in such hostile operations against the government of the *the* United States; it being understood, however, that no objection is to be made to the payment of this sum, or any portion thereof, to any private parties having interest therein for private uses, whenever such satisfactory assurances and guaran-

tees are given. And the said party of the first part agrees to use all efforts consistent with the public service to collect together and transport to market at New Orleans, or elsewhere, the said , to be pointed out to them as belonging to the Confederate States, and to sell the same at public auction with the least possible delay, and immediately to pay over the said sum of eighteen cents per pound, free and clear of all charges, taxes, freights, or other expenses whatsoever as aforesaid. And in consideration of the foregoing, the
217½ said party of the second part hereby agrees to use all his efforts to protect the said cotton from destruction, and to furnish to the said party of the first part full information of the location of said cotton, the number of bales, weight, marks, and as far as possible the title papers from the planters and others from whom it was bought. It is further agreed by the party of the first part, that in consideration of the services of R. A. Porter and R. W. Doyle, in the above behalf, each of them shall be permitted to bring into New Orleans their private property, consisting of cotton, now lying near Alexandria, Louisiana, to the extent of twenty-five hundred bales each, on the U. S. transports, and under the control of the U. S. Q. M. department, each of the said parties to have three hundred bales delivered to them on payment of freight. The remaining forty-four hundred bales shall be sold by U. S. Q. M. department, and fifty per cent. of the net proceeds paid over to the said parties Porter and Doyle.

In witness whereof, the said parties have hereunto set their hands and seals this 30th day of January, 1864.

218 (Duplicate.) S. B. HOLABERD, [L. S.]
Col., A. D. C., Chief Q. M. Dept. Gulf.
J. H. McKEE. [L. S.]

HEADQUARTERS NEW ORLEANS, *30th Jan.*, 1864.

Approved.

N. P. BANKS, *M. G., C.*

Filed Sept. 29, 1864.

GEO. P. BOWEN, *Clerk.*

Deposition of Ross W. Doyle, in behalf of Withenbury and Doyle, taken before George P. Bowen, United States commissioner, at his office in the city of Springfield, Illinois, on the 12th day of June, A. D. 1865.

Int'y 1st. State your business in 1860, 1861, 1862, 1863 and '64, and where you were then engaged in business.

Answer 1st. I was engaged in steamboating during those years, until the year 1864, from New Orleans up the Red river, until New Orleans was taken by the federals, and from that time I was confined to Red river, with the exception of three trips I made from
219 that stream to Vicksburg. Early in January, 1864, I made my escape from that country and came to New Orleans.

Int'y 2d. State your place of residence in these years, and previously.

Answer 2d. My residence is in Steubenville, Ohio, and has always been. I was born there.

Int'y 3d. State what were your sentiments towards the government of the United States when the rebellion broke out in 1861, and during its continuance, and what aid and comfort, if any, you voluntarily rendered the rebel cause.

Answer 3d. I was opposed to the act of secession, and my sentiments were always for the Union, and have been ever since the rebellion broke out, and still continue so. I never gave any voluntary aid or comfort to the so-called Confederate States. I was frequently compelled to perform service with my boat for them by military orders, which, if I did not do, I would have been taken off of her and put into the army. I also had to accept situations in civil
220 service, (when my boat was laid up for low water,) or be conscripted and made go into the army.

Int'y 4th. If you owned any property on the Ouachita river and Red river, please state of what that property consisted, its location, how you acquired title to it, and what became of it. Give all the particulars.

Answer 4th. I owned property both on the Ouachita and Red rivers; it consisted of cotton; cotton on the Ouachita was stored on Dr. J. T. Simmons's plantation, below Monroe, La., which consisted of (935) nine hundred and thirty-five bales, and was owned jointly by W. W. Withenbury and myself; we also owned several lots on the Red river. We received it in payment for services with our boats for the so-called Confederate States, which we were forced to perform by military power, and for other services we had to perform before we could receive our pay in cotton, which we preferred to their worthless trash called money. Our cotton on the J. T. Simmons plantation was taken by the boats of the United States navy, under the command of Rear-Admiral David D. Porter; it was brought
221 to Cairo, and there sold by the United States marshal.

Int'y 5th. If you had any authority or permission from Maj. Gen'l N. P. Banks, commander of the department of the gulf, to bring your cotton out of Red river and its tributaries, state why that permission was given, upon what representations, and when was it given?

Answer 5th. I received a permit from Major Gen'l N. P. Banks, commanding dept. of the gulf, at New Orleans, to bring out twenty-five hundred (2.500) bales of cotton from that country. It was given for services and information given to him on my arrival in New Orleans from that country, as also for the services rendered him by Capt. Withenbury, on his expedition into that country in the spring of 1863, he being fully informed as to how the title was acquired; the cotton on the J. T. Simmons plantation was included in the said permit. The permit was granted January 30th, 1864. I then took this permit by Gen'l Banks's permission into Point Coupee
222 parish, to show it to A. W. McKee, gen'l cotton agent, from whom we had received the cotton in payment for our services, &c., as agreed upon, and required of him an order to save it from des-

truction by burning, or otherwise, as he told me had peremptory orders to burn or remove the cotton unless he was satisfied of our receiving protection and permit to bring it within the lines of the United States forces.

Int'y 6th. If you had any license or authority from Rear-Admiral D. D. Porter, or had any promise from him, with respect to your cotton on either or both of those rivers, please state what that license or authority or promise was. State the facts fully.

Ans. 6th. Captain Withenbury and myself called on Admiral Porter, on board of his flag-ship, and stated to him (and also showed our bill of sale of the cotton on the Simmons plantation; also other bills of sale similar to it of cotton on the Red river) that we had cotton on the Simmons plantation on the Ouachita river. He promised
223 us that as soon as we could get a transport to go for it he would send a gunboat along to convoy it, so that we would be able to get our cotton. Before we were able to get a transport we learned that the gunboats had gone up the Ouachita river, and had taken our cotton off of the Simmons plantation. We then called on Admiral Porter, and stated to him that our cotton on the Simmons plantation had been taken by some of his gunboats. He then told us that if such was the case, he would, as soon as it was reported to him, give us an order, so that we could get it at Cairo, upon our making a good title to it before the prize court at Springfield. Relying upon Admiral Porter's promises above stated, we took no further steps in reference to this cotton until we got to Cairo and Mound City, in June last. We also had thirty-four bales (34) of cotton on the Dr. Maddox plantation, near Alexandria, which was also taken by the gunboats, and which we claimed from Admiral Porter, and he also promised to give it to us at Cairo, upon same conditions as above. We called on Admiral Porter at Mound City, Ills., and reminded him of his promises to us,
224 and he then told us that it had all gone into the hands of the court.

Int'y 7th. Under what license, if any, were you running your steamboat when the rebellion broke out?

Ans. 7th. I was running my boat at the time the rebellion broke out under a license given by the United States, the usual license and custom house regulations.

Filed June 13th, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Joseph Combs, in behalf of Withenbury and Doyle, taken before George P. Bowen, United States commissioner, at his office in the city of Springfield, Illinois, on the 13th day of June, A. D. 1865.

Ques. 1st. Please state where you were in the years 1861, '62, '63, and '64, and what was your business during that time, or any part of it.

Ans. In '61, '62, and '63 I was engaged in steamboating
225 generally, on the southwestern waters.

Ques. 2d. If you was engaged in steamboating during that time on the Red river and Ouachita river, please say what you know of the custom of the confederate officers, in reference to impressing steamboats and their loyal owners in the service of that so-called government, and what were the consequences to such owners if they disobeyed the orders of that authority.

Ans. A part of that time I was engaged in steamboating on the Red and Ouachita rivers. Their custom was to order the captain to do their bidding; if not, they would take his boat from him, and if he objected they would put him in irons and hang him. I know that they threatened to court-martial me for supposed disobedience of orders, and I was continually threatened with violence if I disobeyed orders. That they did send a captain and pilot from Alexandria to the Ouachita river, who took charge of my boat, and took her to Alexandria, and they had a military force on board to compel me to surrender my boat.

226 Ques. 3d. If you knew Captains Witherbury and Doyle during that time and in Louisiana, please state what you know of their loyalty during that time; the course that was pursued towards them and their boats by these rebel authorities.

Ans. I know them. They were looked upon as men favorable to the United States, and were suspected, and common report said that they were opposed to the confederate government.

Ques. 4th. Please state if you know Dr. J. T. Simmons of the Ouachita; and if you do know him, please say if you know from him or otherwise whether he sold his crop of cotton in 1862, and to whom he sold it; what he did with the proceeds, and all the particulars.

(Above question objected to by counsel of La More.)

Ans. I did know Dr. J. T. Simmons. I knew him on the Ouachita river at his plantation. I also know from him that he sold
227 his crop of cotton in the fall of 1862 to the confederate government for its bonds, and that he paid those bonds to Mrs. Tatum for her interest on the plantation, which consisted of one-half. That Mrs. Tatum was a widow; that her husband had paid on the plantation a cash payment of $50,000 some 4 years before the war, which was all that had been paid on it. I am not sure that this was all that was paid on it; that the amount that Simmons realized from the sale of the cotton was about $50,000, and that he paid this to Mrs. Tatum for her interest on the plantation, and thereupon Mrs. Tatum took all of her movable property that her husband had brought there, and took it to her own place in Arkansas. All this I learn from Dr. J. T. Simmons, and from the general report in the neighborhood.

(Above answer also objected to.)

Ques. 5th. Please state the price or value of confederate money or bonds in that country at or about the time of this payment to Mrs. Tatum.

Ans. They were exchanging confederate money or bonds
228 for gold two for one.

Ques. 6th. Please state if you know whether the sale made

by Simmons of his cotton to the confederate government was a forced or voluntary sale.

Ans. I never heard of a forced sale of cotton to the government, but I have heard of men refusing to sell, and who did not sell, and there was no fuss made about it.

Ques. 7th. Please state if you know what Simmons sold his cotton for.

Ans. He sold it for 12½ cents or 13—a price higher than any one else got for their cotton.

Ques. 8th. Please state if you heard Dr. Simmons express himself in reference to the sale of his cotton, and the purchase of Mrs. Tatum's interest on the plantation, whether he was pleased or otherwise.

Ans. He appeared to be well pleased at the whole arrangement.

Ques. 9th. Did you know Norman White in that country? What was his character for peace and order?

229 Ans. I knew Norman White. I knew of his killing a man in New Orleans in a street fight. He was mate of the Grand Duke when she was a rebel gunboat. He killed this man in self-defence.

Cross-examination:

Ques. 1st. State whether during the years '61, '2 and '3, while your boat was being used in the transport service of rebels, you at any time rendered such service voluntarily.

Ans. I did not.

Ques. 2d. State were you or not during that time, as you consider, under duress and compulsion in that service.

Ans. I was.

Filed June 13, 1865.

230 GEO. P. BOWEN, *Clerk.*

Deposition of John Ray, in behalf of Withenbury and Doyle, taken before George P. Bowen, United States commissioner, at his office in the city of Springfield, Illinois, on the 19th day of June, A. D. 1865.

Int'y 1st. Please state your name, place of residence, and your business.

Ans. My name is John Ray; place of residence is Monroe, parish of Ouachita, and State of La. I have resided there continuously between twenty-nine and thirty years. I am a regularly licensed attorney and counseller at law, and have been, and practiced law in said parish as such about twenty-six years; and, since 1847, have added to my profession that of being a cotton planter. My plantation is in Caldwell parish, on the Ouachita river, thirty-five miles below Monroe, La.

Int'y 2d. Are you acquainted with Dr. J. T. Simmons, a planter on the Ouachita river? If so, how long have *have* you known him, and how intimately have you been acquainted with him?

Ans. I am well acquainted with Doctor John T. Simmons; I have

known him ever since he moved into the parish, about fifteen years of age, and perhaps longer. I have acted as his attorney, I
231 think, in nearly all his legal matters, since he lived in the parish, and he usually stopped at my house whenever in Monroe where I resided, and made my house his home.

Int'y 3d. Please state if you know anything of the circumstances connected with the sale by Simmons to A. W. McKee, agent of the so-called confederate government, of the 935 bales of cotton raised by him. State all the circumstances fully.

Ans. Simmons & Tatum were owners of a large plantation about 24 miles by land below Monroe, and raised annually from 1,000 to 1,200 bales of cotton. Tatum died before the war, and Simmons and the heirs of Tatum continued to conduct the plantation and raise cotton, up to the fore part of the year 1863. The heirs of Tatum became dissatisfied with holding the property in common, and employed an attorney for the purpose of provoking a partition of the property, the cotton on hand, the plantation, and negroes. I was employed by Simmons to attend to his interest in that litigation. On Christmas day, 1862, all the parties, with their attorneys, met on the
232 plantation for the purpose of effecting an honorable settlement, if possible. They then made an amicable settlement, by Simmons agreeing to pay the heirs $50,000, and assuming and agreeing to pay all the old copartnership debts. This payment was to be made in 8 per cent. confederate bonds, or in confederate treasury notes, and ninety days was the time fixed within which said payment was to be made, as I now recollect. It was understood the cotton was to be sold to raise the money—that is, the cotton then on the plantation, owned by Simmons and the heirs of Tatum, his brother-in-law, then deceased. Simmons then immediately proceeded to sell between 900 and 1,000 bales of said cotton to the said agents of the so-called confederate government. Doct. C. G. Young was that agent, being sub-agent under said A. W. McKee. The money on that sale was paid over to me, and I paid it over to the attorney of the Tatum heirs. Then regular legal proceedings were instituted to divest the heirs, and change the title of all said property in Doct. Simmons, which was done, and finished and completed by May, 1863, a deed having been made to Doct. Simmons for the interest of the Tatum heirs in and to all this property. All the consideration for this change of title and interest of the Tatum heirs was the $50,000 aforesaid, and the
233 partnership debts, which amounted to very near $200,000.

Int'y 4th. Please state how much cotton was belonging to and on the plantation at the time of sale, and sold as aforesaid, and where stored.

Ans. I never counted the bales; I saw it in bulk in the negro quarters, where it was stored, and the basis of the sale, by agreement of all the parties, was for 1,100 bales of cotton; I mean as between Doct. Simmons and the Tatum heirs.

Int'y 5th. Please state whether you have any knowledge of this cotton having been previously sold by Tatum heirs, or by Doct. Simmons, to any other person or persons.

Ans. I never heard of any previous sale of this cotton by any party to any person or persons, and I must have known it had there been, from the continued revelations of Doct. Simmons to me of all his business, as before stated; and I cannot think any such sale was made, Doct. Simmons being in the universal habit of consulting me in reference to any matter of importance connected with that estate
234 and plantation. The full amount of $50,000 in treasury notes was paid over to the Tatum heirs.

Int'y 6th. What was the value of these notes, compared or tried by gold?

Ans. It is difficult to state, but at about that time in Vicksburg it was as 250 dollars in treasury notes for $100 in gold.

Int'y 7th. Do you know the reputation of W. W. Withenbury for loyalty or otherwise?

Ans. I know the rebels considered him a very suspicious character for them, and that his sentiments and sympathies were with the Union cause. He was publicly denounced in a paper in New Orleans, called the Delta, as such.

Cross-examined by C. Eames, esq., for captors:

Int'y 1st. Were you ever mayor of the city of Monroe, La.? If so, at what period?

Ans. I never was at any period. A brother of mine once was, about the year 1859 to the year 1864, and in fact, is now, by election, and now holds over according to law. He was only elected
235 once, but as there has been no election since, he holds over as already stated.

Int'y 2d. Have you taken the oath under the amnesty proclamation of the late or the present President of the United States?

Ans. I have not, as yet. Immediately after the surrender of the trans-Mississippi department, in which and under which I lived, and the next day after it came to my knowledge, I proceeded to New Orleans for the purpose of complying with all the laws requisite to restore my status as a citizen of the United States. On my way to New Orleans, and before my arrival, I saw President Johnson's amnesty proclamation of the 29th of May, 1865. The day after arriving at New Orleans, in the morning, I went to the United States circuit court for the purpose of taking the amnesty oath under that proclamation. The clerk of that court declined administering that oath to me, as he said, because he had not received the necessary instructions and forms from the Secretary of State of the United States, to authorize him to do so. I then asked him to administer to me
236 the oath of allegiance, which he then did, a copy of which I now have with me. I remained two days afterwards in New Orleans, and the day I left I made application again, and the clerk declined, as for the reason first stated; and I also applied to a United States commissioner and several military officers, who declined to administer the amnesty oath, on the same grounds and reasons the said clerk did.

Int'y 3d. What part, if any, have you taken in the rebellion?

Ans. I opposed it in its inception, and have never taken any part in it.

Int'y 4th. Have you any interest, direct or indirect, in this claim about which you testify?

Ans. None, whatever.

Int'y 5th. Have you a claim of your own now pending in this court for cotton taken by the naval forces in Louisiana, in the spring of 1864?

Ans. I have, for the amount of 344 bales.

Int'y 6th. Have these claimants, in whose case you now testify, any interest whatever in that of yours?

Ans. None, whatever, to the best of my knowledge and be-
237 lief.

Direct examination resumed:

Ques. 1. Please state if you know of Doct. Simmons's holding this cotton as custodian or warehouseman for the so-called confederate government.

Ans. Doct. Simmons obligated himself to keep that cotton in good order, and to deliver it to the order of that government, or its assigns, on the bank of the Ouachita river, at the usual shipping point, free of charge, and that was also the custom that prevailed as to all of that purchased by the confederates.

Filed June 19, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of George R. Remer, in behalf of Withenbury & Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 2d day of May, A. D. 1865.

238 1st int. What is your name, age, residence, and occupation?

1st ans. George R. Renner; sixty, on 1st April, 1865; New Orleans, La.; steamboat captain and clerk.

2d int. State where you were at the time of the breaking out of the present rebellion against the United States, what you were doing, and all you know about the situation of steamboats then at or near New Orleans; and whether, after the rebellion commenced, it was possible for any man to escape to the Union lines with his steamboat.

2d ans. I was steamboating on st'r De Soto, between New Orleans and Shreveport, on Red river. When the rebellion broke out I was part owner of De Soto. I know that the rebel authorities assumed control in New Orleans and Red river. No man could escape with his boats or refuse to work for them when required to do so.

3d int. State whether you was ever employed on any steamboat other than the De Soto, on Red river—if so, on what boat—after
239 the rebellion broke out. State all the circumstances connected with such employment, who commanded the boat or boats you were on, and what was done; state all the facts connected with the same.

3d ans. Yes, on several other boats, and afterwards on the steamer Homer, W. W. Withenbury, master. Was at Minden, La., when the

news came that New Orleans was taken by the U. S. forces. When we came out of Loggy bayou and got a short distance down Red river, met several boats coming up at full speed. Capt. W. hailed them, but they would not stop, but all hallooed out for us to turn back, for the Yanks were coming and would capture us; but Captain Withenbury and myself would keep on down, and see for ourselves. So we kept on down until we came within three miles of Alexandria, and landed about 12 o'clock at night, when Capt. Withenbury sent me down by the boat's yawl to see what could be done. I found we could do nothing but come to Alex. So I staid all night at Alexandria, and in the morning went to the boat by land. On arrival, told
Capt. Withenbury that we had to come to Alexandria, and
240 could go no farther without orders. On arriving at Alexandria an armed force came on board, and gave orders not to leave without permission. St'm'r Homer was loaded with some cotton, corn, bacon, lard, butter, cattle, hogs, sheep, peas, all bought by Capt. Withenbury, for the purpose of going to New Orleans. I remained on board of the Homer, as clerk, until the fifth day of July, '62, when I saw a chance to run the rebel blockade, and arrived in New Orleans, July 19, '62; there being no chance for the boat to come out, so I took the chances as above.

4th int. State whether the steamboats generally, on Red river, hoisted the rebel flag after the rebellion broke out; and if so, whether there were any exceptions; what boats did not wear the rebel flag, and did any boat on which you were employed carry such flag?

4th ans. Most of the steamers did carry the rebel flag or rebel emblems. The steamer Homer did not hoist any rebel flag while I was
clerk on her, that I saw; the steamer De Soto never did hoist a
241 rebel flag, or have one on her while I was on her. I don't think I ever worked a day on a boat that carried the rebel flag.

5th int. How long have you known Capt. W. W. Withenbury, and what do you know of his sentiments with regard to the present rebellion? If you ever heard him express them while you were employed on the Homer, state what they were; also state what are your own sentiments, and what have they been heretofore?

5th ans. About fifteen years; always thought he was against the rebellion; have heard him express Union sentiments while on the Homer. Don't recollect the words, but they were in favor of union; so much so, that I told him that he talked too much, as he would get in a scrape, as he was in the rebels' power. And another time, at the mouth of Loggy bayou, a number of men made the boat land, and talked of hanging him. It took all sorts of good talk to get him out of the scrape. As for myself, I am, and always was, a Union man; always will be, if I starve.

242 6th int. What interest, if any, have you in the result of this suit, wherein W. W. Withenbury and Ross W. Doyle are claimants for 935 bales of cotton?

Ans. None, whatever; did not know of such a suit.

Filed Sept. 1st, 1865.

GEO. P. BOWEN, *Clerk*.

Deposition of Dr. Edward Ames, in behalf of Withenbury & Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 3d day of May, A. D. 1865.

This deponent, being duly sworn, according to law, says he has known Capt. W. W. Withenbury, one of these claimants, more than twenty years, and that, during all this time, said Withenbury has been regularly engaged in running steamboats on Red river, while the water in said Red river was sufficient, which was usually from five to eight months in each year. That said Withenbury has always resided in Cincinnati, Ohio, since this deponent has known him,
243 and has always, so far as this deponent knows or has ever heard, conformed to all the requirements of the U. S. laws regulating or pertaining to the owning and running of steamboats in the rivers of the United States. Deponent further states that said Capt. Withenbury left N. Orleans with his steamboat, "Homer," on the 12th day of April, 1862, on one of his regular trips for Red river. Deponent remembers the date precisely, as he had transactions with Capt. Withenbury and the steamboat "Homer" on that day. Deponet further says, that after the rebellion broke out, say in the spring of 1861, it was impossible for Capt. Withenbury to escape from New Orleans to the Union lines with his steamboat, as the rebel military authorities kept strict watch upon all steamboats, to prevent their going to the north. And, further, that before said Capt. Withenbury could return from Red river, on his regular trip, in April, 1862, the city of New Orleans was captured by the U. S. forces, and the rebel governor took flight on a Red river steamer, for his home, in the parish of Rapides, near Alexandria, on Red river,
244 and that the said governor, as this deponent has been informed, did cause all steamboats which he met coming to N. Orleans to turn back, and sent them up Red river as the only place of security from the Yankees, and that a still closer watch was kept on them to see that they did not escape to New Orleans.

And this deponent further says that during the months of May and June, 1862, the said Capt. Withenbury did communicate with this deponent by letter and verbal messages as to the best mode of trying to escape to N. Orleans from Red river with his boat, the "Homer," and that in all these communications Capt. Withenbury evinced a strong desire to get away from the rebels and to come to N. Orleans with his steamboat; that in the month of July, 1862, he sent his son, Charles Withenbury, who had gone up Red river with him on his last trip, to New Orleans to this deponent's care, with instructions to send him to his home in Cincinnati, as he was fast approaching the age of conscription in the rebel army, and could not remain in the confederacy much longer and keep out of the army, and that by the arrival of the said Charles Withenbury this
245 deponent learnt that his father, Capt. Withenbury, had given up all hopes of getting away with his boat, and had concluded to remain and try and save her. Said Charles Withenbury left for his

home in Cincinnati in the month of July, 1862, in a sailing vessel via N. York; and on his arrival at Cincinnati, this deponent is informed and verily believes, he joined the U. S. army, and now belongs to the 7th reg't Ohio volunteers. This deponent knows that the said Withenbury has always been a staunch Union man, and that during the reign of the rebels in New Orleans he many times expressed his sentiments so fearlessly as to endanger his personal liberty; and, further, that for expressing Union sentiments in the months of March and April, 1862, on his boat on Red river, he was threatened with violence, and was published in the rebel newpapers in N. Orleans as a man striving to promulgate Union sentiments among the people, and consequently a dangerous man to the confederacy. This deponent has seen said publications.

And further this deponent says that during the said Capt. Withenbury was on Red river among the rebels, *said Capt. Withenbury was on Red river among the rebels*; said Withenbury did, on every possible opportunity, communicate with him, sending through his agency from time to time such funds as he could procure for the support of his family, then residing at Cincinnati, which funds this deponent forwarded to them; and this deponent verily believes from the knowledge he has had of the said Withenbury, from first to last, that he has never done anything in his individual capacity or with his boat in aid of the rebellion, except when rebel force has been used, and he has been compelled to work in defence of himself or to protect his boat, and that up to the last he lived in the hope finally of making his way out of the rebel lines with his steamboat Homer.

246

This deponent further states that in the month of January, 1864, Captain Ross W. Doyle came to the city of New Orleans from Red river, and delivered to this deponent messages from said Captain Withenbury; said Doyle made known to this deponent that himself and Capt. Withenbury had a large amount of cotton in the rebel lines, which they hoped to be able to get out as soon as the expedition then getting ready by Gen'l Banks should proceed up Red river. Said Doyle remained in New Orleans until the expedition under Gen'l Banks started, in March, 1864, when, as this deponent was informed, said Doyle went with Gen'l Banks on his headquarters transport "Black Hawk," to Alexandria, Red river. This deponent knows that Captain R. W. Doyle has been steamboating on Red river a number of years, and he believes him to be a thorough Union man. He has not known him as long as he has known Captain Withenbury, but from his associations and common reports, he judges and believes him to be loyal to the United States.

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This deponent further says that he is sixty-five years of age; is a native of Massachusetts; has lived in the city of New Orleans more than twenty years; is a practicing physician, and at present a member of the "bureau of streets and landings" in the city of New Orleans; that he has never forfeited his allegiance to the United States by any act, word, or deed, and that he has no interest in the result of this

suit, or in any other matter wherein the said Withenbury & Doyle are partners.

Filed Sept. 1st, 1865.

GEO. P. BOWEN, *Clerk.*

248 Deposition of John H. McKee, in behalf of Withenbury and Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 15th day of May, A. D. 1865.

This deponent, being duly sworn according to law, says that he is personally acquainted with the said W. W. Withenbury and Ross W. Doyle, claimants in this suit; that R. W. Doyle came to New Orleans in the month of January, 1864, from Red river, where he had been with his steamboat "Vigo" since April, 1862, and that on the said Doyle's arrival in New Orleans he communicated to this deponent important information in regard to the enemy in the Red river country, and he desired this deponent to communicate the same to the commanding general, N. P. Banks, of the department of the gulf, and that the said Doyle also made known to this deponent that he, in common with Captain W. W. Withenbury, owned some 2,500 bales of cotton then lying near Red river and its tributaries, which the said Withenbury & Doyle were anxious to secure from the control *from*
249 *the control* of or destruction by the rebels, and that a considerable portion of this cotton had been received by the said Withenbury and Doyle from the agent of the so-called confederate government in payment for the use of their steamboats Homer and Vigo, which boats had been used and controlled by the so-called confederate government agents for a long time, and that the said Withenbury & Doyle had no power to hinder such use of the said steamboats by said agents, and that had they refused the use of their steamboats, they, the said Withenbury & Doyle, would have been put out of possession of their boats and themselves placed in confinement or into the rebel army, as had been the case with some of the Red river steamboatmen already; moreover, that Captain Withenbury had met General Banks on Red river, in March, 1863, and had fully explained to him the situation of all the steamboats, and their captains and owners, at that time within the rebel lines, and that the said Withenbury had made such arrangements with General Banks that he approved of Withenbury remaining in the re-
250 bel country to protect his own interests and to render service to the U. S. government by giving information to Gen'l Banks from time to time of the movements of the enemy, the situation of the country, and the sentiments of the people, all of which the said Withenbury had performed; and that he, the said Doyle, had then come to New Orleans the more fully to carry out and do what the said Withenbury had promised, while Withenbury remained at Red river ready to meet Gen'l Banks and assist him, whenever he shall approach with his army.

And this deponent further states that the said Doyle desired this

deponent to state all the above facts to Gen'l Banks, and obtain from Gen'l Banks a guarantee of protection of the private property of the said Withenbury & Doyle, consisting of some 2,500 bales of cotton as aforesaid, and to permit them to transport the same on U. S. transports to New Orleans.

This deponent further says he did make known all the above facts to Gen'l Banks and Col. S. B. Holabird, chief Q. M. of the department of the gulf, and that he stated all the facts as to the title of said Withenbury and Doyle to the said 2,500 bales of cotton,
251 explaining to Gen'l Banks and Col. Holabird that they did receive much of said cotton from the agent of the so-called confederate government in payment for the forced services of the said Withenbury and Doyle and of their steamboats, the Homer and Vigo, and that upon these representations, and in consideration of services to the U. S. government rendered by the said Withenbury and Doyle, a permit was granted the said Withenbury and Dole, and dated the 30th day of January, 1864, to bring into New Orleans, on U. S. transports, 2,500 bales of cotton. Said permit was signed by Col. S. B. Holabird, chief quartermaster department of the gulf, and approved by Major Gen'l N. P. Banks, commanding said department.

And this deponent further says that at the time the said Doyle made his application for said permit and transportation, he, the said Doyle, did produce and show to this deponent a number of bills of sale or transfers for different lots of cotton from the agent of the so-called confederate government, together with said agent's order on the parties and persons having the custody of the said cotton, and that among these bills of sale or transfers was one for nine hundred and thirty-five (935) bales of cotton then in the custody of
252 one J. T. Simmons, on the Ouachita river, and also on the same bill of sale a lot of more than three hundred bales of cotton then on the plantation of J. D. Allen, on Red river; that accompanying these bills of sale were orders drawn on the said Simmons and Allen to deliver to the said Withenbury and Doyle the cotton described in the said bill of sale. The said orders were drawn on separate pieces of paper, but were signed by the same agent, viz, "A. W. McKee, C. S. agent to purchase cotton in La.;" and, further, that these bills of sale and orders were dated at Alexandria, at the office of the cotton agency, January 6th, 1864.

This deponent further states that he was well acquainted with the handwriting and signature of the said A. W. McKee, and he knows that the signature which he saw to the aforesaid bills of sale and orders was the true and genuine signature and handwriting of A. W. McKee. And this deponent also states that in all the bills of sale from the said Confederate States agent, and from other parties, whereby the said Withenbury and Doyle claimed the owner-
253 ship of cotton, the amount collectively did not overrun 2,500 bales, and that the lot in the keeping of Simmons was a part of the 2,500 bales, and necessary to make up a total of that amount, and that the said 935 bales was a part of the 2,500 bales for which

Gen'l Banks granted said permit and transportation, January 30th, 1864.

This deponent also further states that Capt. R. W. Doyle remained in New Orleans until Gen'l Banks started on his expedition to Red river, in the month of March, 1864, and that the said Doyle did accompany that expedition, and that he went with Gen'l Banks on his headquarters transport, and that the said Doyle was a practical steamboatman, who had been running his steamboat on Red river since the rebellion, and that his presence on the boat with Gen'l Banks was considered essential and important in the event of any trouble arising on the way, which might call for an intimate and thorough knowledge of the river and the surrounding country, and of the navigation of the Red river.

254 This deponent also states that he went to Alexandria with the land forces of Gen'l Banks's expedition, and that on his arrival there, he met Captain Withenbury, who was engaged and in the employment of Admiral David D. Porter, of the U. S. Navy, as a Red river pilot, and was assisting to pilot the U. S. gunboats over the falls.

And, further, that on one occasion this deponent went on board Admiral Porter's flag-ship, in company with Captain Withenbury, Captain Doyle, and Captain John M. Martin, while said flagship was lying at Alexandria, and he saw Captain Withenbury show to Admiral Porter several bills of sale for cotton from the aforesaid C. S. agent, and heard Withenbury complain to Admiral Porter that some of his men were seizing and carrying on board a boat or barge belonging to Porter's fleet, as prize, a portion of the cotton belonging to Withenbury and Doyle; the said Withenbury at that time explained fully to Admiral Porter how he and Doyle obtained this cotton, and Admiral Porter then promised to stop his men from taking any more cotton belonging to the said Withenbury and Doyle, and to give them an order for the redelivery of their cotton then and there taken

255 to Withenbury and Doyle upon its arrival at Cairo; this particular cotton consisted of 34 bales taken from Dr. Maddox's plantation, about 3 miles from Alexandria, inland, being a part of 292 bales stored on said plantation for the said Withenbury and Doyle, and was marked "T. H. M.," which was the only mark upon said 34 bales. This deponent's attention was particularly called to this cotton, as it was being unloaded from the wagons marked "U. S. N." and placed upon the boat or barge of the navy.

And this deponent further states that the said Withenbury did then state to Admiral Porter that he and Doyle owned 935 bales of cotton on the Ouachita river, which was stored on the plantation of one Dr. J. T. Simmons, where the said 935 bales was grown. And that the said Withenbury did then produce and show to Admiral Porter the same bill of sale for these 935 bales of cotton which Doyle produced to this deponent at New Orleans, in January, 1864, and which was included in the permit aforesaid, which bill of sale this depo-

256 nent has fully described above, and that Admiral Porter did then promise not to interfere with the said 935 bales, but to

afford and render the said Withenbury and Doyle all the assistance in his power to get it into the Union lines.

This deponent further states that after the foregoing interview with Admiral Porter, the said Captain Withenbury, in pursuance of the agreement for the protection of his cotton, went with Gen'l Banks to Grand Ecore as pilot on the transport on which the General travelled, and, on his return to Alexandria, the said Withenbury resumed his duties and services as pilot on Admiral Porter's gunboats, thus neglecting entirely his private interests, until about May 4th, 1864, when, by the permission of Gen'l Banks and Admiral Porter, both Withenbury and Doyle left Alexandria and started for New Orleans on the U. S. transport "John Warner," which transport was captured by the rebels about 30 miles below Alexandria, when Capt. Withenbury and Doyle made their escape through the woods to a U. S. gunboat; but, as they stated to this deponent, and
257 which he believes to be true, they lost their baggage, and the most of the important papers concerning their cotton.

This deponent states that he has been a merchant in the city of New Orleans since January, 1863; that he is a native of Virginia, and is 34 years of age; that he is a loyal citizen of the United States, having never forfeited his allegiance or resided in rebel territory; that he has no interest in the result of this suit, and that he undertook the agency of this matter, (obtaining permit and transportation for said cotton,) because of the fact that the said Withenbury and Doyle were recommended to him as good and loyal men and reliable in all matters, and also because of this deponent's acquaintance with Gen'l Banks and Col. Holabird, chief quartermaster of the department of the gulf.

Filed Sept. 1st, 1865.

GEO. P. BOWEN, *Clerk.*

258 Deposition of Nathaniel P. Banks, in behalf of Withenbury and Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 16th day of May, A. D. 1865.

Nathaniel P. Banks, being duly sworn, says that he is, and at the time hereinafter stated was, in the military service of the government of the United States, having held and now holding the position of major general of volunteers in said service; that in the spring of 1863, while the U. S. army was in the occupation of Red river, he knew Capt. W. W. Withenbury; that said Withenbury was recommended to deponent by persons in whom deponent had entire confidence as a loyal man; that said Withenbury rendered valuable service to the U. S. government in said campaign, and that deponent had no reason whatever to doubt the loyalty or patriotism of said Withenbury; that while in the occupation of said country, in 1863, knowing it to be temporary, deponent did not encourage any person or persons to take the oath of allegiance or to commit themselves in any

manner whatever to the government of the United States, nor
259 did deponent request or advise them to follow the army when it left for Port Hudson.

Deponent thought it best for the service of the government that every person should do as he pleased in that regard; that it was no worse to have friends in that country after the army had left than to have enemies. Deponent made this statement to everybody, among others to Capt. Withenbury. In addition deponent gave said Withenbury a pass through the lines of the army, for the purpose of receiving from him at any time thereafter information as to the movements of the enemy, or on other subjects useful to the government. It was understood that said Withenbury was to remain in said Red river country for that purpose; that in the spring of 1864 deponent met said Withenbury again under similar circumstances as above stated, and his conduct confirmed the confidence of deponent in the loyalty and patriotism of said Withenbury.

Deponent further says that said Withenbury from time to time gave deponent information and advice in regard to the enemy, the character of the country, and the sentiments of the people, which was of importance, and upon which deponent relied with entire con-
260 fidence, and deponent never had occasion to distrust the advice or the integrity of said Withenbury. Whatever was done by said Withenbury, so far as deponent was concerned, was from said Withenbury's own choice, and not from compulsion.

He further says that he cannot say that he requested said Withenbury to remain. Deponent thinks he should not have made that request to any person; but deponent consented to said Withenbury's remaining in the country after the army of the United States evacuated, believing that said Withenbury was entirely willing, and that it was consistent with the interest of said Withenbury to do so. This was advantageous to the U. S. government, and, if a safe course for said Withenbury, was consistent both with deponent's duty to said government and to the people, deponent says that the assistance of said Withenbury, during the campaigns of 1863 and 1864, was very important, and seemed to be dictated by a patriotic consideration for the interest of the country.

Deponent never had reason to doubt the integrity of said
261 Withenbury as a man, or his patriotism as a citizen, in the slightest degree, but, on the contrary, all that deponent has known of said Withenbury confirms the opinion of deponent formed of said Withenbury upon the first meeting of deponent and said Withenbury.

Filed Sept. 1st, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Charles Hays, on behalf of Withenbury and Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 28th day of April, A. D. 1865.

1st q. What is your name, age, occupation, and place of business?
1st ans. My name is Charles Hayes; thirty-five years of age;

steamboat captain; and my place of business is on the Mississippi river and Red river.

2d q. Do you know W. W. Withenbury and Ross W. Doyle? and if yea, how long have you known them, and when and where
262 did you know them?

2d a. I do know the persons named; I have known Mr. Withenbury for ten years and upwards, and I have known Doyle for about six years; I have known them as captains and clerks of steamboats on the Red river, running between New Orleans and all points on the Red river.

3d q. What do you know relative to the position and condition of steamboatmen and steamboats at New Orleans prior to the 15th day of April, A. D. 1861? State fully and particularly.

A. I know that no steamboats were allowed to go within the federal lines from the city of New Orleans after the 15th day of April, 1861, and that said boats could not leave said city without military permits from the rebel authorities, for any point. I left the city of New Orleans on the 17th of April, 1862, with the steamboat Starlight, for Shreveport, on Red river, and went there, and on or about the first day of May, 1862, I saw the steamer Homer, Capt. Withenbury, at Alexandria, Red river, that boat having left New Orleans a few days before I left with the Starlight. I further state that
263 after the arrival of the rebel governor, Moore, of Louisiana, at Alexandria, with the news of the capture of New Orleans by the federal forces, no steamboats at that time in Red river were allowed to leave for New Orleans; this was about first of May, 1862. When I attempted to leave Alexandria with the Starlight, I was fired upon by the rebel governor's guard, and brought to and forced to go to Shreveport, and thereafter forbidden by the rebels to go to New Orleans, or elsewhere in the federal lines. I believe that all other steamboats then in Red river were under the same prohibition. I know that all steamboats were forced to render service to the rebel authorities, whether they were willing to do so or not, and that in some cases captains of steamboats, for refusing to comply with rebel orders, were forced by military power to leave their boats, and were placed in confinement, and their boats put into the rebel service under other parties. I know that I did not receive any payment for the service which I was forced to render for the rebels at any time, and I believe that this was the case with nearly all the boats used by the rebels.

264 4th q. What do you know relative to the position occupied by Captain Withenbury towards the United States? Was he a loyal man or not?

4th a. I know that Capt. Withenbury was suspected by the rebels of being a loyal Union man; that he was published in the rebel papers in New Orleans and Shreveport as such. I know that it was necessary for Captain Withenbury to disguise his sentiments as a Union man, and to act circumspectly and obey orders of the rebels, for the protection of his property and for his personal safety.

5th q. Do you know anything, and what, in relation to Capt. R.

W. Doyle having a steamboat in the Red river? State all you know on the subject.

A. I know that Capt. Ross W. Doyle had a steamboat in the Red river called the Vigo at the same time that I was there with the Starlight: I was very intimate with Capt. Doyle, and I always considered him a loyal Union man. I know that he came to New Orleans in January, 1864, and went with the Red River expedition in March, 1864, under General Banks. I am a loyal citizen of
265 the United States, and I am now in the service of the said government as master of a transport.

Filed Sept. 1, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of J. Madison Wells, in behalf of Withenbury and Doyle, taken before Theophilus Kemper, United States commissioner at his office in the city of Cincinnati, Ohio, on the 31st day of May, A. D. 1865.

Deponent says that he is personally acquainted with the claimants, Withenbury and Doyle; that he has known Captain Withenbury for many years as a steamboat captain on Red river; that when the U. S. army and navy were at Alexandria, Red river, in March, 1864, he met Capt. Withenbury, then acting as pilot to Admiral Porter's gunboats and the army transports, and that when the army was retreating, and the U. S. transports were at the head of the falls waiting for pilots to bring them over the falls, (several unsuccessful attempts having been made by inexperienced pilots, and one boat sunk
266 and others lodged upon the rocks, thus stopping the channel,) Capt. Withenbury came to consult with me about trying to get released from imprisonment a first class Red river pilot by the name of Risher. (This Risher had been arrested as a rebel spy, and was then sentenced to go to New Orleans for final trial.) Said Withenbury then told Gen'l C. Grover, then in command of the post at Alexandria, that if he would release Risher he would guarantee that they would bring every transport safely over the falls; but General Grover, for some reason, doubted the statement of Withenbury, and insisted that Risher was a spy and must be sent to New Orleans. This deponent then wrote a note to Gen'l Grover, fully indorsing all that Withenbury had promised. Withenbury carried this note to Gen'l Grover, and plead more earnestly than before for the release of Risher, in order that he might be of service in bringing the transports over the falls. Gen'l Grover finally consented, and when Withenbury went to the provost marshal's office he found that Risher had been already placed on the Ohio Belle among other prisoners, and the boat was about to leave for New Orleans. This de-
267 ponent further states that Capt. Withenbury prevailed on the officer in charge of the Ohio Belle to wait until he could go to Gen'l Grover's office and get an order for Risher's release. Withenbury ran at the top of his speed, got the order, and returned to the boat just as her lines were cast off and the plank hauled in, but

he succeeded in having Capt. Risher set on shore. When he went with him to the quartermaster, Capt. Welch, introduced Risher, and vouched for his ability and readiness to do the work of bringing the transports, some twenty in number, over the falls. And this deponent further says that Capt. Welch immediately ordered Risher to the work, furnishing him a horse to ride to the head of the falls, and the result was that in less than two days every boat was safely below the falls, and not an accident to the amount of one dollar. This deponent further states that he heard Capt. Welch acknowledge that but for the energy and determination displayed by Capt. Withenbury in this matter, many of the boats would in all probability have been lost. This deponent fully believes that in the foregoing
268 matters, as stated, Capt. Withenbury has been of great service to the government, and the means of saving many hundreds of thousands of dollars, and probably of saving the entire army from serious disaster, as the transports were particularly needed below the falls in the event of a further and hasty retreat being necessary, or for bringing up supplies to the army in case it remained at that place. This deponent also states that this service rendered in getting the transports over the falls was accomplished some two weeks in advance of the passage of the gunboat fleet over the falls, by means of a dam constructed by General Bailey. Neither this deponent nor Capt. Withenbury believed that Risher was a spy, and the result has proved the correctnoss of their opinion.

Filed June 2d, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Samuel M. Todd, in behalf of Withenbury and Doyle, taken before Robert H. Shannon, United States commissioner, at the office of Sullivan, Billings and Hughes, on the 13th day
269 of July, A. D. 1865.

My name is Samuel M. Todd; I reside, at present, at No. 212 Erato street, in the city of New Orleans; I am forty-four years of age. I know W. W. Withenbury. I do not recollect anything about Doyle. Mr. Withenbury is now present. I have known Mr. Withenbury since the year 1848, when he was running the steamboat Monterey on the Red river. I saw Mr. Withenbury frequently during the winter and spring of 1862 and '63. I saw him on the 8th day of May, 1863, on the Bayou Rapides, within 6 or 8 miles of Alexandria. I was in command of the pickets, being a captain in the Confederate States (so-called) service; Alexandria being at that time occupied by the Union forces under General Banks. Mr. Withenbury, at that time, applied to me to allow him to pass into the federal lines. I passed him through, and he was to communicate with me so that I was to get in. I knew that Mr. Withenbury, before the 8th of May, 1863, was in command of and the captain of the steamboat Homer, then running on the Red river, in confederate government service. This was during the year 1863. The way I knew this was by loading this steamer while I was provost marshal

270 in the so-called Confederate States service. I loaded this steamer frequently, and at one time, in the spring of 1863, I took command of her at Alexandria, the same as a captain of a boat would do, that is, rung the bell, ordered the lines loose, and the boat went into the river.

Q. What did Capt. Withenbury do with regard to this assuming the control of the steamboat Homer, as stated by you?

(Mr. Kellogg, on behalf of the libellants, objects to this question on the ground of irrelevancy.)

A. He remonstrated against it and ordered the boat hands to make the boat fast to the wharf again.

(Answer objected to on the ground that the declarations of the claimant, Withenbury, are not evidence in his favor, and that the same is hearsay, the order not being addressed to the witness.)

At one time during the spring of 1863, while the steamboat Homer was lying at Alexandria, I loaded her with a squad of soldiers and ordered Mr. Withenbury not to leave the port with his boat
271 until further orders, and I left a guard on the boat to prevent him from leaving. It was my duty, as confederate provost marshal, to prevent persons from the confederacy crossing into the federal lines. [I have no recollection of having received a verbal order from E. Surget, adjutant general on R. Taylor's staff, to arrest Capt. Withenbury, because he had reason to believe that he was going into the federal lines.] (This part in brackets was objected to by Mr. Kellogg as hearsay.) I was in the habit of receiving my orders from Mr. Surget. I cannot state when or where, after the 8th of May, 1863, I saw Mr. Withenbury. I do not know whether, after this time, Mr. Withenbury went into the confederate lines again. I saw Mr. Withenbury about the 3d day of April, 1864, at Natchitoches, Louisiana. This town was at this time occupied by the federal forces.

Cross-examined:

I know Dr. Simmons, residing in the parish of Ouachita. He is a man about 50 years of age. I cannot say whether in 1862 or 1863 Dr. Simmons was loyal to the United States. I do not know anything about his reputation in that regard. I do not know what the
272 issue in this suit is.

Filed August 9, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of George W. Wiggins, in behalf of Withenbury & Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 13th day of July, A. D. 1865.

My name is George W. Wiggins. I am twenty-five years of age. I reside in the city of New Orleans. I am acquainted with Capt. W. W. Withenbury, and have known him for about fifteen years. I know Captain R. W. Doyle, and have known him for about six years. I was in the city of New Orleans on the 25th day of April, 1862. I

know that at that time the steamboat Vigo was lying at the foot of Jackson street. I do not know who was in command of this boat. I know that when the federal forces came in sight of the city, the Vigo was taken in tow by the steamer B. S. Hodge, and started for Shreve-
port, on the Red river. One of the engines of the Vigo was
273 down at that time, and that was the reason she was taken in
tow. She hed no crew aboard at this time. I do not know whether Captain Doyle was on board at this time. The next time I saw this boat after she left 18 Mile Point was at Alexandria, and the next time after that I saw her at Cross bayou, above Shreveport. I went away from New Orleans on the 25th of April, 1862, as pilot on the steamboat Grand Era, and went with her up the river, and arrived at Alexandria about the 28th day of April, 1862. While I was going up the Red river, at a point about seventy-five miles above Alexandria, I met the steamboat Homer coming down, bound for New Orleans, on her regular trip. The time when I so met the Homer was about four days after the 28th of April, 1862. I was the pilot of the Grand Era at this time. I had orders from a man named Major McKee to hail all boats coming down, and tell them that the city of New Orleans had been taken by the federals, and to turn back to Shreveport. This Major McKee was the commanding officer at Alexandria when we arrived there. I hailed the pilot of the Homer, and
told him what had happened in New Orleans, according to
274 the order of Major McKee. While I was in sight of the Homer, at this time, she did not turn back.

Cross-examined:

At the time I stated the Homer had on some cotton; she had no soldiers on board. The boats in the Red river, in passing, run so close to each other that pilots have as much as they can do to take care of their own boats. I returned to New Orleans in about ten days after the 25th of April, 1862. I came down in a skiff with Capt. Dick Sennett. From that time until now I have been in U. S. government employment as a pilot. I do not know when Captain Withenbury returned to New Orleans; I saw him in Alexandria while it was occupied by the Union forces in 1864. There was no difficulty in coming down to New Orleans from the Red river in May, 1862. When I left Shreveport in May, 1862, I came in a stage from Alexandria to the mouth of the Red river. It was about 8 o'clock in the morning that I left Alexandria. At this time Alexandria was in the hands of the confederates. I do not know whether Captain Withen-
bury could have come down at the same time I did; there were
275 four persons in all who came down at the same time I did. At this time one of our party had despatches from one confederate general to another, and that was, perhaps, the reason that we were enabled to get through. No one knew that we had these despatches except our party; they were not shown to anybody. I do not know of my own knowledge that Captain Withenbury has contributed anything to the federal cause. I do not know of my own knowledge of any aid given by Captain Withenbury to the federal cause. After I

saw Captain Doyle, in 1862, I do not recollect seeing him again until about a month ago. The Vigo belonged to Captain Doyle.

Redirect:

These despatches referred to, as I understood, came from Jefferson, Texas. We had got down fifteen miles below the mouth of the Red river before I knew of the existence of these despatches. Caution was necessary in leaving Alexandria because the service of pilots was needed on the Red river by the confederates. Captain Withen-
276 bury is a Red river pilot. It was very difficult for any one to leave Alexandria at the time I left, for the confederate authorities did not want anybody to get away. I came to Alexandria from Shreveport on the steamboat Bonford. The Bonford, at that time, was in the confederate service, and the confederate authorities sent her back to Shreveport. No steamboat at this time was permitted to leave Alexandria for New Orleans.

Recross:

When Major McKee wanted me to stay at Alexandria as a pilot, I told him I would go to New Orleans and come back. The only person who knew I was coming away was George Allen.

Filed August 9th, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Hu. Kennedy, in behalf of Withenbury and Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 14th day of July, A. D. 1865.

277 My name is Hu. Kennedy; I am fifty years of age; I reside in the city of New Orleans; I am at present mayor of the city of New Orleans; I know Capt. W. W. Withenbury; I do not know Captain Doyle; I have known Captain Withenbury for between 6 or 7 years last past; I met Captain Withenbury some time in the early part of May, 1863, at Alexandria, while the federal forces were in that city; Capt. Withenbury, as I understand, had before that time been within the confederate lines on the Ouachita and Red rivers; I met Captain Withenbury unexpectedly at the headquarters of Gen. Banks in Alexandria, and I remarked to him that I was astonished to find him there, as I had supposed the confederates had hung him. After some conversation with him [he requested me to give him an introduction to Gen'l Banks, as he wished a permit to go into the confederate lines.] (This part in brackets is objected to.) [I stated to the general that he, Captain Withenbury, had cotton and other property as well as a steamboat, on the Ouachita and Red rivers, and that he was anxious to preserve them. I stated to the general that in my opinion Captain Withenbury was a reliable Union man and a little indis-
278 creet in the expression of his opinion, but one whom I thought could be made very useful to the United States government. The general then stated to me that on those recommendations he could

have an understanding with Capt. Withenbury and give him the necessary pass.] (All this part in brackets objected to by Mr. Kellogg.) [When Captain Withenbury asked me for the introduction to General Banks, I asked Captain Withenbury what service do you propose to render to the U. S. government in return for the permission to go outside of the federal lines? To which Captain Withenbury replied that he knew all about the state of affairs on the Ouachita and Red rivers, and could give valuable information. It was then that I agreed to introduce Capt. Withenbury, and urge his claim for a pass to go outside of the federal lines. It was stated to Gen'l Banks by Capt. Withenbury, in my hearing, at this time, that all the property he had in the world was on these rivers; that he was a loyal citizen, and that his family were in the State of Ohio. The consideration, I understood at the time, was that Captain Withenbury was to be allowed
279 to look after and take care of and save his property in return for the privilege of being allowed to leave our lines under the pass from Gen'l Banks.]

(All this portion in brackets objected to by Mr. Kellogg, on the ground, 1st, that the declarations of the claimant are not admissible in his own favor; and, 2d, that the declarations of Gen'l Banks are hearsay; and, 3d, that the declarations of the witness are irrelevant in the matter of opinion.)

[Captain Withenbury, at this time, represented that his property was in danger of being destroyed by the confederates, unless he was there to protect it. The whole conversation was in reference to the protection of Captain Withenbury's property that was in danger from the confederates, and in return for the pass that he required to enable him to protect that property, the services he would render to the United States government.]

(This part was objected to by Mr. Kellogg, upon the ground that the declarations of the claimant are not evidence in his own favor, and that of Gen'l Banks hearsay.)

I was not a party to any of the details; I declined to have
280 anything to do with it; I know that a pass was given; I know that a pass was given to Capt. Withenbury by General Banks to go outside of the federal lines; at this time I was a guest of General Banks, at his headquarters.

Cross-examined:

I know that in accordance with the pass to which I have alluded, Captain Withenbury returned into the confederate lines; I do not know how long he remained there.

Filed August 9th, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of James H. C. Barlow, in behalf of Withenbury and Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 18th day of July, A. D. 1865.

My name is James H. C. Barlow; I am forty years of age; I reside in the town of Alexandria, parish of Rapides, and State of Louisiana,

most of the time since the year 1851. I was at Alexandria
281 during the years 1860, 1861, and up to the fall of 1862, from the month of September, 1862; I was in the parish of Avoyelles, returning frequently to Alexandria until the month of July, 1863, when I returned to Alexandria permanently, and remained there until the 13th of May, 1864, when I came away with Admiral Porter's fleet, and thence to New Orleans, where I have remained ever since. From September, 1862, to July, 1863, I was acting as agent and superintendent for Mrs. Alexander upon her plantation; prior to September, 1862, I had been practicing law, and for some years district attorney for the 13th judicial district of Louisiana. After July, 1863, I was in the practice of the law at Alexandria until I came away as I have stated; I was in Alexandria at the time of the breaking out of the rebellion, about the latter part of 1861 or the first part of 1862. I have an impression that there was a proclamation of President Lincoln calling upon the citizens to return to their allegiance; I do remember of having seen a synopsis of the proclamation of President Lincoln above referred to, but I am not positive as to the time; I saw it published in the columns of the Louisiana Democrat, I think it
282 was; this paper was published at Alexandria. Before I left Alexandria in 1864, as I have stated, I was never made aware of an act of Congress of July 17, 1862, entitled "An act to suppress insurrection, to suppress treason and rebellion, to seize and confiscate the property of rebels, and for other purposes." If that act had been published in any of the local papers of that part of the State of Louisiana where I was I would have seen it; I never saw the act referred to before this evening.

Cross-examination:

When I saw the proclamation which I mentioned in my direct examination, I did not know whether it was issued by any act of Congress or not. It purported to be issued by the President of the United States. I do not recollect of having seen the act of Congress, dated August 6th, 1861. The proclamation that I saw was soon after the battle of Manassas, in July, 1861; I mean that the proclamation bore date shortly after that battle. I cannot say that the proclamation I saw was the one dated August 16th, 1861. In the proclamation that I saw, according to my present recol-
283 lection, there was nothing said about confiscation of the property of citizens. About two years ago I saw the proclamation confiscating the property of officers in the rebel army. I either saw this or was told of it.

Redirect:

From the examination which I have made of the printed copies, as the acts of Congress, this day, I think they are not the same published in the local papers of Rapides and Avolloyes.

Being shown a proclamation of the President of the United States, dated April 15, 1861, the witness says, I saw that proclamation entire; that is the proclamation to which I alluded in the first part of my direct examination; that and a proclamation confiscating rebel officers'

property are the only two that I saw up to the time I left Alexandria, in 1864. My memory, as to dates, is uncertain. I took the oath of allegiance to the U. S. government on the 30th of March, 1864, and have never been in the rebel service. I am not interested in this suit.

Filed August 9th, 1865.

GEO. P. BOWEN, *Clerk.*

284 Deposition of John Hienn, in behalf of Withenbury & Doyle, taken taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 18th day of July, A. D. 1865.

My name is John Heinn; I am fifty-two years of age; I reside in the city of New Orleans; I have resided in the city of New Orleans for two months last past; I was in Alexandria, Shreveport, and Texas, during and from 1861, until about two months ago; I was a steamboat owner and captain a part of the time I have mentioned; I have seen the local papers of Alexandria, Shreveport, and Texes several times from 1862 to 1865; I was never made aware of an act of Congress of July 17, 1862, entitled "An act to suppress insurrection, to suppress treason and rebellion, to seize and confiscate the property of rebels, and for other purposes." As a steamboatman I was compelled by order of the rebel quartermasters and commissaries and transportation masters of the Red river to obey their orders, they putting a guard on the boats at the same time. So far as I know, other boats on the Red river were treated in the same manner.

285 Cross-examined:

I am an Englishman by birth. There might have been many laws published in the papers alluded to, and I not have seen them. I took the oath of allegiance about three or four months ago.

Filed August 9th, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of John M. Lapeyre, in behalf of Withenbury and Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 22d day of July, A. D. 1865.

My name is John M. Lapeyre; I am sixty-four years of age; I reside in the city of New Orleans.

Q. Since the surrender of Kirby Smith and the confederate forces west of the Mississippi river, have you received any amount of cotton shipped from the vicinity of Shreveport, Louisiana?

A. I have received cotton from Shreveport and the neigh-
286 borhood, as the representative of the Louisiana State Bank.

Q. How much cotton have you received, and from whom?

A. About 6,000 bales from John A. Stevenson, agent of the bank.

Q. Is the cotton so received a part of the first original purchase

of cotton made by said Stevenson with the confederate money of said Louisiana State Bank.

A. It is so represented to me by said agent.

Q. From your best knowledge and belief, was or was not the title of the said bank to said cotton, or any part of it, acquired from the confederate government, or any agent of said government?

A. Not that I know of.

Q. How much cotton has been reported by said Stevenson on hand since the surrender of said confederate ferces?

A. He has made no report of what he would be able to get.

287 Q. Is said Stevenson now shipping any part of said cotton to the firm of Stevenson & May, of this city?

A. Not to my knowledge.

Q. Has the said bank any interest in the cotton now being shipped to Stevenson & May?

A. None at all.

Q. Are you aware that the bank ever did have any interest in or to that cotton?

A. None.

Q. Have you received any letters, advices, or messages, from said Stevenson, since the surrender of said confederate forces, with regard to the cotton purchased by said Stevenson for the Louisiana State Bank?

A. I have received several notices of shipments, bills of lading, notifications of draughts for expenses; nothing else.

Q. Are you aware whether the bank ever disposed of any or all its interest in the cotton so originally purchased by said

288 Stephenson?

A. In August, 1863, a change was effected by Stevenson with the confederate government of the cotton bought by him against other cotton which the confederate government was to have given him on the Ouachita river, with liberty to him to export the last-mentioned cotton without hindrance from the confederate government, and upon the further condition that should he be unable to export the cotton on the Ouachita river, the contract should be considered null at his option.

Q. Was this contract carried into effect?

A. It was attempted to be, and some cotton that was transferred to us by the confederate government was seized by Admiral Porter's boat on the Ouachita river. Parties going up for the cotton, not being able to reach it, returned without it.

Q. Upon the seizure of this cotton by Admiral Porter's fleet, was not this contract with the confederate government annulled by Mr. Stevenson?

289 A It was annulled after the expedition of Gen'l Banks returned, because it was ascertained that most of the cotton was gone, in some shape or other.

Cross-examined:

The contract made between Stevenson, as the agent of the bank, and the confederate government was to this effect, that if Stevenson

was able to ship this cotton from the Ouachita river, in whole or in part, the contract would hold to that extent. Stevenson never did ship any of his cotton, but he did ship the cotton which he had conditionally exchanged for the Ouachita cotton. The inability on the part of Stevenson to ship the cotton from the Ouachita did not annul the contract in toto, because during the exchange some 3,500 bales of our cotton on the Red river had been stolen or burned, and we considered that our right existed to that extent on all cotton that was transferred to us on the Ouachita, whether we could then get it or not. We ascertained after the expedition of General Banks that the confederate government were unable to return to us the 3,500 bales which were lost during the exchange. Mr. Stevenson wrote
290 to us he had cancelled the trade with the confederate government, but this was long after the seizure of the cotton by Porter's fleet, about a month after the return of General Banks's expedition to the city of New Orleans; I mean the evacuation of Alexandria. The object of this trade concerning the cotton was considered to be for the mutual benefit of all the parties concerned in it, to wit, the bank had the advantage of being allowed the privilege of exporting the Ouachita cotton, and the confederate government had the advantage of having the cotton in a safer place. There was nothing in the contract referred to except a simple exchange. There was nothing in it, to my knowledge, about the confederate government indemnifying the bank against loss by fire or otherwise, nor even returning the original cotton.

Filed August 9th, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of John J. Browder, on behalf of Withenbury & Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, Louisiana, on the 24th day of July, A. D. 1865.

291 My name is John J. Browder; I am thirty-four years of age; I reside in the city of New Orleans; I know Captain W. W. Withenbury and Captain R. W. Doyle; I have known Captain Withenbury for upwards of fifteen years, and Captain Doyle since the year 1859; I am a pilot on the Red river; I was a pilot with Capt. Withenbury, commencing in February, 1862, on the steamer Homer, and continued until July in the same year. The Homer left New Orleans for the Red river on her regular trip on the 12th of April, 1862, and went up that river, and we were at Minden, above Alexandria on that river, when we heard that the city of New Orleans had been taken by the federal forces. After Captain Withenbury heard this news he decided to come to the city of New Orleans, and continued to make provisions for the trip, purchasing provisions, cargo, &c., for the New Orleans market, and left Minden for New Orleans; and on the way down, above Alexandria, we met the steamboats which left the city of New Orleans after or about the time the city was taken, and the captains of those boats hailed Captain Withen-

bury, and told him that the city had been taken, and that they had been ordered up Red river by Governor Moore, and were or-
292 dered to turn back all boats which they met. Captain Withenbury did not turn back, saying that he was determined to get to the city if possible. We stopped at midnight three miles above Alexandria, and Capt. W. sent down the clerk in a yawl to Alexandria to ascertain if we could make our escape past the place before daylight. The clerk came back by land, as the confederate authorities took the yawl from him, and he reported that it was impossible for the boat to pass by Alexandria, as the place was guarded. Captain Withenbury concluded to take the chances and try to persuade the authorities to let him go by, and we got to Alexandria about daylight, when we were boarded by an armed force of about forty men, and they notified him not to leave without permission, and left a guard on board of the boat. Some three days after this Capt. W. started with the Homer down the river, and got down as far as Fort De Russey, where we were stopped by another armed force, and ordered back up Red river. During the time I was pilot of the Homer Captain Withenbury was particularly watched by the rebels, and it was impossible for him to get away without losing his
293 life, as I heard threats made against Capt. Withenbury, especially if he attempted to make his escape. I was on board of the Homer in April, 1862, at Loggy bayou, where a mob came on board and threatened to take Capt. W. off and hang him for expressing Union sentiments on an up trip. I am a loyal man, and have been a pilot for the United States government for two years last past. Capt. Withenbury is a pilot on the Red and Ouachita rivers. I have always regarded Capt. W. as a Union man.

Filed August 9th, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Samuel M. Todd, in behalf of Withenbury & Doyle, taken before Robert H. Shannon, United States commissioner, at his office in the city of New Orleans, La., on the 28th day of July, A. D. 1865.

Samuel M. Todd, being recalled, testified as follows:

Q. Please state whether or not, while you were in the so-called confederacy on Red river, you received any orders, written or
294 verbal, from the rebel General Richard Taylor, or any other rebel authority, concerning the probability of steamboats and their owners trying to escape into the federal lines. If so, what were you ordered to do to prevent such escape? If they were written orders, where are they? If verbal, state as near as you can what they were.

A. I had verbal orders from E. Surget, adjutant general to Major General R. Taylor, to place particular surveillance on Capt. W. W. Withenbury, as he (Surget) had been informed that Capt. Withenbury was about to escape to the federal lines with the steamboat Homer and her cargo. She was then lying at the wharf at Alexan-

dria, La., loaded. This was about January or February, 1863. I was ordered to detain all steamboats coming down the Red river, and in case they refused to stop or to come to when ordered, I was required to shoot down promptly all on board, if necessary to effect this object. I had written orders in regard to steamboats from Lieut. General E. Kirby Smith, at Shreveport, La., and when I came within the federal lines, on the 3d day of April, 1864, at Natchitoches, Louisiana, I delivered them, together with all others in my
295 possession, to the provost marshal at that place, Capt. Inwood. The purport of those orders in regard to steamboats was to board any boat ascending and descending Red river, to see that they had proper passes, and guard their movements.

Q. State whether you made known to Capt. Withenbury the special orders you had concerning him and the steamboat Homer.

A. I stated to him confidently that I had the special orders respecting him and his boat as above stated, and that these orders were generally known to the officers and men under my command. I cautioned Capt. Withenbury not to attempt to escape, for he certainly would lose his life and his boat if he did so. This caution and information I gave to Capt. Withenbury from motives of friendship and kindness towards him.

Q. State whether any steamboat could have escaped from the rebel lines.

A. I do not think it was possible. My command, consisting
296 of 150 men, were encamped on the Red river bank. These men were all mounted, and would have pursued any boat, and have overtaken her had she gone past my camp. I had picket lines established to the mouth of the Red river, and there was also a picket steamboat running up and down the river from Alexandria to its mouth for the purpose of watching the steamboats on Red river, and guarding the river from the approach of the federals.

Q. State what has been your position since you left the rebel lines, and what it is now.

A. I was first employed in the U. S. quartermaster's department in this city. I was then elected as a member of the Free State legislature of Louisiana, in 1864, and served until its adjournment. I am now custodian of the land office documents of this State. I am a loyal citizen of the United States. I took the oath of allegiance on the 3d day of April, 1864, at Natchitoches, Louisiana, and
297 have been and remained within the federal lines ever since.

Filed August 9, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Adolph Rachal, in behalf of Withenbury & Doyle, taken before Robert M. Kirkpatrick, notary public, at the Ice-house Hotel, in the town of Alexandria, Louisiana, on the 14th and 15th days of August, A. D. 1865.

Int'y 1. What is your name, age, residence, and occupation?

A. Adolph Rachal; forty-two years old; reside in Alexandria, Louisiana; occupation, receiving, forwarding, and commission merchant, and warehouseman generally.

Int'y 2. Has or has not this been your permanent occupation and residence during the years of the rebellion just ended?

A. It has been.

Int'y 3. Were you at any time during the rebellion em-
298 ployed in the office of the Confederate States cotton agency? If so, under whom, and for what part of the time?

Ans. I was employed in the office of the C. S. cotton agency under Andrew W. McKee, who received his appointment from the secretary of the C. S. treasury department. I was in the employment of said Mckee in the said cotton agency, as clerk, from 15th August, 1863, to 15th March, 1864. The said A. W. McKee was the general agent for the purchase and management of the C. S. cotton in the State of Louisiana. Deponent knows this fact from having seen, read, and copied much, if not most, of the correspondence between the said McKee and Mr. Memminger, the secretary of the treasury, between the dates above mentioned. Deponent says that from his knowledge of the business under Mr. McKee's management, that said McKee was fully authorized and empowered to use his own judgment in the purchase, preservation, removal, and disposition of all C. S. cotton in the State of Louis'a, west of Mis. river. Deponent says that he has read and copied letters from the said C. S. secretary of the treasury, conferring said power on him, said McKee; but of the letters referred to, deponent has no knowledge at present,
299 they not being in his possession.

Int'y 4. Do you know anything about the purchase of the cotton on the Tatum & Simmons plantation, on the Washita river? If so, state what you know.

Ans. Deponent knows that Dr. C. G. Young, sub-agent of McKee, bought the said cotton, about nine hundred and thirty-five bales, from John T. Simmons in the y'r 1863, and returned the vouchers in regular form to the said office of the cotton agency at Alex'a, Louis'a. The blank hereto attached with my signature, and the paragraph of the notary, is a fac simile of the voucher used in the purchase of the Tatum & Simmons cotton, which were returned in duplicate to C. S. cotton office in Alex'a, La., both signed by J. T. Simmons, the seller, and C. G. Young, the purchasing agent, in the manner in which their names are respectively written by me in the accompanying blank. The lower portion of the said blank, under the words "Confederate States of America," was the form used in all transfers of cotton from the said A. W. McKee to other parties, and the
300 entire voucher accompanied such transfers in all cases.

Int. 5. Do you know whether or not the cotton purchased by the said Young, as sub-agent, from the said Simmons, to wit, the nine hundred and thirty-five bales, was transferred to others by said A. W. McKee? If so, to whom?

Ans. Deponent knows that the said McKee, as agent, did transfer the said 935 bales to W. W. Withenbury and R. W. Doyle, in settlement of dues from the Confederate States to the said Withenbury & Doyle.

Int'y 6. What constituted a commercial delivery of cotton that had

been sold by planters or others to agents as aforesaid, when the parties selling agree to hold it subject to an order of purchaser and at risk of purchaser?

Ans. The transfer of the voucher, receipt, or bill of sale from the original vendor was considered a delivery of the cotton. In all the experience of deponent (for near twenty years) as a warehouseman, the transfer of the warehouse receipts was considered absolute
301 delivery of the property in store from vendor to new purchaser, and no cotton was delivered to any party who did not produce the said receipt.

Int'y 7. State whether you know W. W. Withenbury and R. W. Doyle, and how long you have known them, and whether or not they were friendly to the government of the United States during the time of the rebellion just ended.

Ans. Deponent has known W. W. Withenbury for twenty years or more; has known Doyle for about seven or eight years, and has heard them express themselves as opposed to secession, rebellion, and in favor of the Union. The whole time of the late war the said parties, Withenbury & Doyle, were suspected by the people of this locality, and wherever they were, with being friendly to the Union. The said Withenbury was capt. of the steamer Homer, and the acknowledged owner of the same, and also of the barge Envoy, and Doyle was the capt. and owner of the steamer Vigo.

302 Int'y 8. Could Capt. Withenbury and Doyle escaped with their steamers, Homer and Vigo, from the confederate to the federal lines, after the capture of the city of New Orleans by the United States forces?

Ans. They could not have done so without running very great risk of losing their lives and property, because the Red river at this point (Alex'a) was very strongly guarded by an armed militia force, of which deponent was a member. All boats coming to this place from above were boarded by a detail of the said militia force, and closely watched to prevent their escape. The steamer Homer was above this point on Red river at the time of the capture of New Orleans, on the 25th April, 1862. At that time the steamer Vigo was towed from New Orleans to some point above this place, (Alex'a.)

Int. 9. Were or were not all steamboats in this department, whether willing or unwilling, forced to render service to the C. S. government when called upon by any military officer of the said government?

Ans. They were. In case of refusal the captain, if under
303 conscript age, would have been conscripted, and, in any event, the boat would have been taken from him and placed in charge of some officer of the government, and thus forced to render the services required.

Int. 10. Do you know whether or not the confederate government paid promptly for services rendered by steamboats in this department?

Ans. They did not pay promptly, but on the contrary were very dilatory. This was a general complaint among all steamboat owners and captains.

Int. 11. Was or was not A. W. McKee authorized to use cotton (belonging to the C. S. government) in payment of debts due by said government?

Ans. The said A. W. McKee was authorized by Gen'ls E. Kirby Smith and Richard Taylor to pay C. S. government debts in C. S. cotton, and in some instances he was peremptorily ordered to do so, some of which orders dep't saw. Deponent, as clerk in cotton
304 agency, has in some instances used C. S. cotton to pay gov't debts, by order of A. W. McKee. Deponent says further that he knows that Dr. R. A. Porter, of New Orleans, received C. S. cotton from the said A. W. McKee, at this place, (Alex'a, La.,) in payment of a large claim which the said R. A. Porter had against the said C. S. gov't, for some twelve or fifteen thousand beef hides which had been impressed from him, the said Porter, for the use of the C. S. government.

Int. 12. Is the letter now shown you and marked A, from the treasury department, C. S. A., dated Dec. 19th, 1863, and signed "A. Roane, ch. clerk-in charge of P. L. office," and addressed to the said A. W. McKee, Alex'a, La., a genuine letter or document?

Ans. Deponent recognizes the said document as being one received from the said treasury department at the cotton office in Alexandria, La. Others were received at the said cotton office from the said treasury department, of similar purport to this one, conferring full and discretionary powers to the said A. W. McKee, in regard to the disposition of the C. S. cotton in this department.

Int. 13. Examine the documents marked B, and say if
305 they are genuine or not.

Ans. They are original and genuine documents. The document numbered 641, dated "H'd'q'r's dep't trans-Miss., Shreveport, La., Aug. 28, 1863," and signed "by command of Lieut. Gen'l E. Kirby Smith, W. R. Boggs, brig. gen'l and chief of staff," was brought to the cotton agency at Alexandria and presented by John A. Stevenson, and who, in accordance with the said letter, demanded the planters' receipts or vouchers for all the purchases of Dr. C. G. Young, of cotton, in the Washita country. At the time of the presentation of said order or letter, the said A. W. McKee was absent in the State of Texas. Deponent and the other clerk, M. M. Rhorer, in obedience to the order presented, proceeded at once to turn over to said Stevenson all the planters' receipts for the purchases by Dr. Young as above referred to, which were then in the office. The receipts so turned over to Stevenson amounted to sixteen thousand nine hundred and eighty-nine (16,989) bales of cotton, and the said John A. Stevenson signed the receipt in duplicate hereto attached and marked B. The entire amount of the said Dr. Young's
306 original purchases was nineteen thousand four hundred and forty-nine (19,449) bales of cotton. And the cotton purchased from Simmons, to wit, 935 bales, was a part of the said 19,449 bales. The voucher or receipt for the purchase of the Tatum and Simmons cotton, to wit, 935 bales, was not among the receipts turned over to the said Stevenson, the said voucher or receipt having been taken from

the papers of the said office, by the said McKee, for the purpose of settlement with Withenbury and Doyle. Other vouchers had been taken out for other purposes, thus leaving the original am't of the Dr. Young purchase to be turned over to said Stevenson, short by twenty-four hundred and sixty (2,460) bales. All papers and other documents alluded to by this deponent, which are not hereto attached, have been lost or destroyed, so far as the knowledge of this deponent goes; the blank vouchers referred in answer the 4th int., is of the same kind as those which were used in Dr. Young's purchases, and turned over to J. A. Stevenson, one of which vouchers accompanied each lot of cotton so turned over.

Filed August 28, 1865.

GEO. P. BOWEN, *Clerk.*

307 *Exhibit A, referred to in deposition of A. Rachel.*

TREASURY DEPARTMENT, C. S. A.,
Produce Loan Office, Dec. 19, 1863.

SIR: You letter of Oct. 28th, with all of its enclosures, has been received. The letters of which you send copies had previously come to hand. The secretary of the treasury is gratified with your account of your operations, and approves what you have done. It is to be hoped that the full report of which you speak, with accompanying invoices and vouchers, will soon come to hand. It is very desirable to have the invoices for record as soon as possible. Your accounts should also be transmitted by the first safe opportunity. Information about the condition of things in your purchasing district is so limited that it is impossible to give any specific instructions. You will therefore be compelled to exercise your best discretion in consulting with the military authorities to do whatever the exigencies of
308 your situation may demand. You will report, however, as frequently as possible, and keep this office well advised of all operations, as well pertaining to the purchase of cotton as to the measures you may take for its preservation. Congress frequently calls for information, and you will therefore give detailed statements as far as practicable. You will find enclosed copies of letters which have been previously addressed to you; also copies of circulars relative to the collection of the tithe cotton under the tax act of April 28th, 1863. You will make preparation to execute the "regulations," as far as practicable. On this point it would be best for you to consult with the military authorities.

I am, very respectfully,

A. ROANE,
Ch. Clerk in charge of P. L. Office.

A W. MCKEE, Esq., *Alexandria, La.*

Filed Aug. 28, 1865.

GEO. P. BOWEN, *Clerk.*

309 *Exhibit B, refered to in deposition of A. Rachel.*

No. 641.] H'DQU'RS DEP'T TRANS-MISS.,
Shreveport, La., Aug. 28, 1863.

SIR: You will proceed to Alexandria and confer with Major A. W. McKee in regard to the best arrangement for disposing of gov't cotton east and south of this place. You will receipt to Maj. McKee for the cotton purchased by Dr. C. G. Young, taking up and obtaining a transfer of the planters' receipts in lieu of your own.

You will proceed thence to Monroe and investigate the condition of this cotton, conferring with Dr. C. G. Young, and take such steps as will prevent its capture by the enemy, its destruction by us, and consequent loss to us. You are herewith accredited to Gen. Hebert, com'd'g at Monroe, who will furnish every facility in his power to accomplish the end in view, and will not burn the cotton referred to until further orders.

By command of— Lieut. Gen'l E. KIRBY SMITH.
W. R. BOGGS,
Brig. Gen'l and Chief of Staff.

Capt. STEVENSON,
through Lt. Col. W. A. Broadwell.

310 Indorsement: Transportation furnished in kind from Shreveport to Alexandria.

W. W. BARRETT, *P. Q. M.*

OFFICE COTTON AGENCY,
Alexandria, La., Sept. 4, 1863.

Received of Maj. A. W. McKee, gen'l agent to purchase cotton in Louisiana, the sellers' receipts for sixteen thousand nine hundred and eighty-nine bales cotton, purchased for the Confederate States by Dr. C. G. Young, sub-agent for A. W. McKee. This transfer is made in accordance with the accompanying order from Lieut. Gen'l E. Kirby Smith, No. 641.

JNO. A. STEVENSON, *C. S. Agent.*

OFFICE COTTON AGENCY,
Alexandria, La., Sept. 4th, 1863.

Received of Maj. A. W. McKee, gen'l agent to purchase cotton in Louisiana, the sellers' receipts for sixteen thousand nine hundred and eighty-nine bales cotton, purchased for the Confederate States by Dr. C. G. Young, sub-agent for A. W. McKee. This transfer is made in accordance with the accompanying order from Lieut.
311 Gen'l E. Kirby Smith, No. 641.

JNO. A. STEVENSON, *C. S. Agent.*

Indorsement:

The within duplicate receipts were signed in my presence by Jno. A. Stevenson, as C. S. agent. Said Stevenson, at the time of signing

said receipts, said nothing as being agent for any other party or parties in reference to the within-mentioned cotton.

AD. RACHEL.

Filed August 28, 1865.

GEO. P. BOWEN, *Clerk.*

Blank voucher referred to in the deposition of A. Rachel.

[Here enter the weight of the bales only and their marks.] Bales, aggregate weight , at $. State of , parish of , town or post office, .

The undersigned having sold to the Confederate States of America and received the value of the same in bonds, the receipt whereof
312 is hereby acknowledged, bales of cotton, marked, numbered, and classed in the margin, which are now deposited at , (said cotton being at the risk of the Confederate States,) hereby agrees to take due care of said cotton whilst on plantation, and to deposit the same in good shipping order, at own expense, at , in the State of , to the order of the secretary of the treasury, or his agents, or their assigns.

[Fac simile of vouchers used in the C. S. cotton agency at Alexandria, La. (Signed) AD. RACHEL.]

J. T. SIMMONS.

, 186 .

The undersigned, as agent of the government, certifies that the within cotton has been examined by him, or by a competent
313 judge, and that its character will rank according to the commercial scale as , and also that the weights and marks are as described, the cotton being in good merchantable order, and safely stored in a covered building.

The undersigned certifies that the price agreed upon is a fair market price at the present time.

C. G. YOUNG.

CONFEDERATE STATES OF AMERICA,
Treasury Department, Office Cotton Agency, , 186 .

This is to certify that the within and above described cotton has been sold to , and delivery is hereby ordered to be made to him or to his order.

314 Given under my hand, in the year and day above mentioned.

Filed August 28, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of E. R. Biossat, in behalf of Withenbury & Doyle, taken before Robert M. Kilpatrick, notary public, at the "Ice-house Hotel," in the town of Alexandria, Louisiana, on the 15th day of August, 1865.

E. R. Biossat being sworn, says:

His name is Eugene R. Biossat; aged forty-six years; resides in Alexandria, parish of Rapides, State of Louisiana, and has been engaged in the editorial department of a newspaper for many years.

and has been the sole editor and proprietor of the Louisiana Democrat, (a newspaper published in the town of Alex'a, Louisiana,) since the 1st May, 1861. Deponent was for many years the postmaster in this said town of Alexandria.

Int. 1. Had you any knowledge of the passage of the acts
315 of the U. S. Congress of July 17th, 1862, or of any proclamations by the President of the United States, of that said date?

Ans. Deponent says that he did not know of the passage of these acts of the U. S. Congress of July 17th, 1862; that he had access to all newspapers which found their way to this country, and had those acts come to his knowledge, he would have published them or a synopsis of the same for the information of the people hereabouts, and that no persons here had better facilities for finding out matters of that sort than deponent. Consequently, deponent does not think the acts of Congress mentioned, of said July 17th, 1862, were at all known in this portion of the country.

Int. 2d. Were you intimate at the confederate military h'dq'rs in this place (Alex'a) during the rebellion?

Ans. From the date of the establishment of the said military h'dq'rs at this place, (Gen'l R. Taylor commanding,) deponent was intimate with and at the said h'dq'rs of Gen'l Taylor and his
316 staff up to the 15th day of March, 1864.

Int. 3. Do you know anything of the official status of one Andrew W. McKee, at the said h'dq'rs of Gen'l R. Taylor?

Ans. Deponent says he, McKee, was the head man of the cotton department in the State of Louisiana, west of the Miss. river, and that he, the said McKee, stood well with Gen'l Taylor and his staff, and what the said McKee did was always sanctioned by Gen'l Taylor.

Int. 4. Examine the document marked C, and state whether it is a genuine and official document or not.

Ans. Deponent says, after examination of the document marked C, he recognizes it as being a genuine and official document, being in the handwriting of E. Surget, who was at the date thereof A. A. gen'l in Gen'l Taylor's staff, and so continued up to the surrender of Gen'l Taylor.

Filed Aug. 28, 1865.

317 GEO. P. BOWEN, *Clerk.*

Exhibit C, referred to in the deposition of E. R. Biossat.

H'DQ'S DIST., WESTERN,
Alexandria, May 2, 1863.

Mr. A. W. McKee, Gen'l Gov't Agent for the purchase of Cotton.

SIR: The maj. gen'l comd'g desires me to say that he wishes all gov't cottons which have been rolled out for the purpose of burning, replaced under shelter.

Very respectfully y'r ob't serv't,

E. SURGET, *A. A. Gen'l.*

Filed Aug. 28th, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of James W. Duncan, in behalf of Withenbury & Doyle, taken before Theophilus Kemper, United States commissioner, at his office in the city of Cincinnati, Ohio, on the 15th day of September, A. D. 1865.

318 1. Please state your age, residence, and business; and if you say you were in the southern confederacy during the rebellion, please state whether you are restored to your civil rights.

Ans. I am over thirty-three years of age. I reside in Shreveport, Louisiana. I am a lawyer. I was in the confederacy during the rebellion, and I am advised that I have been restored to my civil rights.

2. Do you know Andrew W. McKee? How long have you known him? Where did you know him? Did you know him in the years 1861, 1862, 1863, and 1864? What was his business?

Ans. I do know Andrew W. McKee. I have known him since 1858 or 1859; I think, 1859. I first knew him in New Orleans. I knew him in 1861, '62, and '63, but I did not see him during those years. I saw him in 1864. From October, 1862, until up some time in 1864, he was agent for the produce loan office, which was a branch of the treasury department of the southern confederacy, for the purchase of cotton in Louisiana for the treasury department of the Confederate States.

3. What do you know of the authority of said McKee to
319 purchase and dispose of the cotton of the so-called confederate government in Louisiana, in 1863 and 1864? State all the facts and particulars fully. If you have in your possession any documents which relate to the subject involved in this question, please annex them, and state the source from which you derived them.

Ans. On the 17th of Sept., 1862, Mr. Memminger, secretary of the treasury of the Confederate States, under authority of an act of the Confederate States congress establishing the produce loan office, appointed McKee general agent for purchasing cotton for the confederate government in the States of Texas and western Louisiana. On the 2d of February, 1863, Mr. Memminger, by letter to McKee, restricted his purchases of cotton to western Louisiana. McKee was authorized to take all needful measures for the preservation of cotton purchased by him on behalf of the confederate government, and to prevent its falling into the hands of the United States forces, by removing it from exposed points, or selling or transferring it to parties who were willing to take it, assuming the risk, or by burning it, if necessary. I had at one time in my possession a number of letters
320 from Mr. Memminger, secretary of the treasury of the Confederate States, and from Mr. Roane, chief of the produce loan office at Richmond, recognizing and conferring on McKee the authority which I have mentioned in the foregoing part of this answer. McKee was instructed by the treasury department of the Confederate States to exercise his best discretion in reference to the purchase and disposition of the government cotton, and, in consultation with the military authorities, to do whatever the exigencies of the situation might demand. I have not the documents from which this information is derived in my possession, those documents having been de-

and has been the sole editor and proprietor of the Louisiana Democrat, (a newspaper published in the town of Alex'a, Louisiana,) since the 1st May, 1861. Deponent was for many years the postmaster in this said town of Alexandria.

Int. 1. Had you any knowledge of the passage of the acts
315 of the U. S. Congress of July 17th, 1862, or of any proclamations by the President of the United States, of that said date?

Ans. Deponent says that he did not know of the passage of these acts of the U. S. Congress of July 17th, 1862; that he had access to all newspapers which found their way to this country, and had those acts come to his knowledge, he would have published them or a synopsis of the same for the information of the people hereabouts, and that no persons here had better facilities for finding out matters of that sort than deponent. Consequently, deponent does not think the acts of Congress mentioned, of said July 17th, 1862, were at all known in this portion of the country.

Int. 2d. Were you intimate at the confederate military h'dq'rs in this place (Alex'a) during the rebellion?

Ans. From the date of the establishment of the said military h'dq'rs at this place, (Gen'l R. Taylor commanding,) deponent was intimate with and at the said h'dq'rs of Gen'l Taylor and his
316 staff up to the 15th day of March, 1864.

Int. 3. Do you know anything of the official status of one Andrew W. McKee, at the said h'dq'rs of Gen'l R. Taylor?

Ans. Deponent says he, McKee, was the head man of the cotton department in the State of Louisiana, west of the Miss. river, and that he, the said McKee, stood well with Gen'l Taylor and his staff, and what the said McKee did was always sanctioned by Gen'l Taylor.

Int. 4. Examine the document marked C, and state whether it is a genuine and official document or not.

Ans. Deponent says, after examination of the document marked C, he recognizes it as being a genuine and official document, being in the handwriting of E. Surget, who was at the date thereof A. A. gen'l in Gen'l Taylor's staff, and so continued up to the surrender of Gen'l Taylor.

Filed Aug. 28, 1865.

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Exhibit C, referred to in the deposition of E. R. Biossat.

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Alexandria, May 2, 1863.

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SIR: The maj. gen'l comd'g desires me to say that he wishes all gov't cottons which have been rolled out for the purpose of burning, replaced under shelter.

Very respectfully y'r ob't serv't,

E. SURGET, *A. A. Gen'l.*

Filed Aug. 28th, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of James W. Duncan, in behalf of Withenbury & Doyle, taken before Theophilus Kemper, United States commissioner, at his office in the city of Cincinnati, Ohio, on the 15th day of September, A. D. 1865.

318 1. Please state your age, residence, and business; and if you say you were in the southern confederacy during the rebellion, please state whether you are restored to your civil rights.

Ans. I am over thirty-three years of age. I reside in Shreveport, Louisiana. I am a lawyer. I was in the confederacy during the rebellion, and I am advised that I have been restored to my civil rights.

2. Do you know Andrew W. McKee? How long have you known him? Where did you know him? Did you know him in the years 1861, 1862, 1863, and 1864? What was his business?

Ans. I do know Andrew W. McKee. I have known him since 1858 or 1859; I think, 1859. I first knew him in New Orleans. I knew him in 1861, '62, and '63, but I did not see him during those years. I saw him in 1864. From October, 1862, until up some time in 1864, he was agent for the produce loan office, which was a branch of the treasury department of the southern confederacy, for the purchase of cotton in Louisiana for the treasury department of the Confederate States.

3. What do you know of the authority of said McKee to
319 purchase and dispose of the cotton of the so-called confederate government in Louisiana, in 1863 and 1864? State all the facts and particulars fully. If you have in your possession any documents which relate to the subject involved in this question, please annex them, and state the source from which you derived them.

Ans. On the 17th of Sept., 1862, Mr. Memminger, secretary of the treasury of the Confederate States, under authority of an act of the Confederate States congress establishing the produce loan office, appointed McKee general agent for purchasing cotton for the confederate government in the States of Texas and western Louisiana. On the 2d of February, 1863, Mr. Memminger, by letter to McKee, restricted his purchases of cotton to western Louisiana. McKee was authorized to take all needful measures for the preservation of cotton purchased by him on behalf of the confederate government, and to prevent its falling into the hands of the United States forces, by removing it from exposed points, or selling or transferring it to parties who were willing to take it, assuming the risk, or by burning it, if necessary. I had at one time in my possession a number of letters
320 from Mr. Memminger, secretary of the treasury of the Confederate States, and from Mr. Roane, chief of the produce loan office at Richmond, recognizing and conferring on McKee the authority which I have mentioned in the foregoing part of this answer. McKee was instructed by the treasury department of the Confederate States to exercise his best discretion in reference to the purchase and disposition of the government cotton, and, in consultation with the military authorities, to do whatever the exigencies of the situation might demand. I have not the documents from which this information is derived in my possession, those documents having been de-

stroyed by the military authorities of the trans-Mississippi department.

4. State what you know of the creation of the trans-Mississippi cotton bureau; who created it, and by whose authority it was created.

Ans. It was established by Gen'l E. Kirby Smith, commanding the trans-Mississippi department, upon his own authority. He had no authority from the Confederate States government to establish such a bureau. It was established as a military necessity. The
321 following is a copy of gen'l orders No. 35, establishing the bureau:

HEADQ'RS DEPARTMENT TRANS-MISSISSIPPI,
Shreveport, La., Aug. 3, 1863.

General Orders No. 35.]

Lieut. Col. W. A. Broadwell is announced as chief of the cotton bureau for the department of trans-Mississippi. All government agents for the purchase, collection, or other disposition of government cotton, are directed to report to, and receive their instructions from Lieut. Col. Broadwell.

By command of— Gen'l E. KIRBY SMITH.

S. S. ANDERSON,
Adjutant General.

This action of General Smith was afterward recognized by the secretary of the treasury, only so far as it looked to the preservation of the government cotton, and no further. It did not recognize the authority of the cotton bureau to dispose of any of the cotton purchased by the treasury agents, but, on the contrary, the secretary of the treasury informed Gen'l Smith, by letter dated Richmond, Sept. 28th, 1863, that all the cotton already purchased for the treasury department, or to be purchased hereafter, is needed, and, indeed, is
322 already pledged to carry out certain financial schemes of the government, which letter was destroyed by the military authorities of the trans-Mississippi department.

5. State what authority, if any, such trans-Mississippi cotton bureau had over Andrew W. McKee and his purchases. What authority had the military over said McKee, as such treasury agent? Was there any ruling or decision upon that question? If so, what authority made that ruling, and when and where was it made?

Ans. It had no rightful authority at all. Andrew W. McKee was not in the military service, but he was simply an officer, or agent, of the treasury department, and in no way subject to military jurisdiction, and the cotton purchased by him was not purchased for the use of the army of the trans-Mississippi department. There was a decision upon that point, upon the question as to whether McKee was subject to military jurisdiction or authority, as treasury agent. The decision was rendered by the Hon. E. Warren Moise, judge of the Confederate States district court for the district of Louisiana, at
323 Natchitoches, La., September 4, 1864. The substance of that decision was that McKee held no military position, was not

connected with the army, nor attached to it in any manner known to the rules and articles of war.

6. What advice or instructions were given McKee to sell or dispose of the cotton of the so-called confederate government? State it, and who gave it, and when.

Ans. His instructions with reference to the sale of it, I have already stated. Those instructions came from the secretary of the treasury at various times during the years 1863 and 1864.

7. If you ever saw or inspected any official papers addressed to said McKee as agent for the purchase and sale of cotton for the confederate government, please state when you saw them; what they were; their contents; and their present whereabouts. State all the circumstances.

Ans. In the month of July, 1864, I was retained as McKee's counsel in a trial before a court-martial held at Alexandria, La. I
324 had occasion, as his counsel, to frequently and closely inspect his official papers, and particularly his letters of advice and instruction from the sec'y of the treasury, and the chief of the produce loan office. Many of these documents constituted a material part of his defence. The contents of the letters of advice and instruction from the secretary of the treasury, and the chief of the produce loan office, I have already stated in substance. They referred to the purchase and disposition of the cotton for the government. These documents were filed as evidence and made part of the record of the proceedings of the court-martial, which record has been destroyed, together with the papers referred to in this answer.

8. State what acts, if any, of said McKee came under your observation, or within your knowledge as said agent, whereby he purchased and sold or handed over cotton as payment of debts due for work and labor done for the confederacy. State all the particulars.

Ans. I know that cotton was purchased by his sub-agents in
325 McKee's name. I have frequently seen planters' certificates of sale of their cotton to the confederate government, through McKee, as agent. I know of McKee's handing over cotton in payment for work and labor done for the confederacy. I know a number of instances in which he transferred cotton to parties for compensation for services in hauling other cotton to more eligible points. I know also of his transferring cotton in liquidation of a claim against the Confederate States government for hides purchased in Louisiana, near Alexandria.

9. If you know particularly of a letter addressed by the secretary of the treasury of the confederate government to Geo. W. Randolph, secretary of war of that government, in 1862, relating to the co-operation of the military with McKee in the discharge of his duties, state where that letter is now, what has become of it, and how it was indorsed, and all the particulars. State the object of the letter, if you know it.

Ans. On the 17th of September, 1862, Mr. Memminger addressed a letter to G. W. Randolph, secretary of war, informing him of McKee's appointment as general agent of the government

326 for the purchase, &c., of cotton in the State of Texas and western Louisiana, requesting him, the secretary of war, in order to enable McKee to perform the duties of his office without obstruction or delay, to relieve agents or persons employed by him, McKee, from the operation of the conscript law, and to give McKee necessary authority to that effect, and to furnish him with such other facilities as he might require. Upon that communication the secretary of war made an indorsement, directing the proper officer to detail for duty with McKee such persons as McKee might require, who were of conscript age, relieving them from military duty so long as they were in McKee's employment, and also directing them to render McKee such facilities as he might require in the discharge of the duties of his office; the letter was annexed to the record of the court-martial, which was destroyed as already stated, and the letter with it. I have frequently had the letter in my possession and examined it closely.

10. If *if* there has been any judicial ruling as to McKee's authority and power as such treasury agent, please state what it
327 was, and when and where it was made.

Ans. There was a decision (one already referred to) rendered by the Hon. E. Warren Morris, Confederate States district judge for the district of Louisiana, at Natchitoches, in which it was held that McKee was an agent of the treasury department of the Confederate States, with such powers as I have already described.

11. If you know of any approval by the confederate authorities of contracts that were made by said McKee and others to pay the debts of the confederacy in cotton, please state them, and the circumstances fully.

Ans. I know that in one instance McKee turned over three or four hundred bales of cotton to Dr. R. A. Porter, as payment of a claim held by the said Porter against the Confederate States for hides sold to them by Porter, and this was done with the approval of Lieut. Gen'l Dick Taylor, commanding the district of western Louisiana, in which the cotton was situated. The cotton was considered in
328 an exposed situation. I also knew that cotton was transferred to various persons (some ten or twelve) by McKee, for services rendered in hauling cotton from the banks of Red river, in the neighborhood of Natchitoches and Alexandria, to the Sabine, in Texas. The annexed paper, marked A, is a correct copy of a letter addressed by A. W. McKee to Maj. Gen'l R. Taylor, and the indorsement thereon is a correct copy of the indorsement made by Gen'l Taylor on the letter; the original letter and the indorsement have been destroyed.

12. If you know the usage and custom among planters in the Ouachita and Red river counties, when they sell cotton, to agree to keep it on storage for the purchaser until he is ready to ship it, and that their possession is the possession of the purchaser, please state the usage and custom fully.

Ans. The universal usage was, when the Confederate States government purchased cotton from planters, to leave it in the custody of

the planters, they obligating themselves to take good care of
329 it, and deliver it at their expense at the shipping point agreed upon; the planter was regarded as nothing more than the warehouseman, a custodian for the confederate government. If there were any exceptions to this custom, they were very rare and grew out of peculiar circumstances.

13. Have you any personal knowledge of Querouze or any member of the firm of G. A. Le More & Co., of Havre, France? When did you know them? What connexion did they have, if any, with the trans-Mississippi cotton bureau at Shreveport? State the particulars.

Ans. Querouze and one of the Le Mores were both in Shreveport in the spring of 1864, pushing a cotton claim for the house of Le-More & Co., of France, in the cotton bureau; they had no official connexion with the cotton bureau.

14. Please state what the nature of the claim you refer to that they were pushing before the cotton bureau was.

Ans. Le More & Co., of Havre, France, had furnished the
330 Confederate States government with a large quantity of gray cloth, for which they were to be paid in cotton, delivered at Brownsville, on the Rio Grande; the government was not able to or did not deliver the cotton at Brownsville as agreed upon; after a very considerable delay it was agreed between the government and Le More & Co.'s agent that an equivalent quantity of cotton in value should be delivered to them in Louisiana, somewhere on the Red river, or on the Ouachita. In pursuance of that agreement Lieut. Col. W. A. Broadwell, chief of the cotton bureau, turned over to Le More & Co., or to their agent, 830 bales of cotton or thereabouts then on the Ouachita river, near Monroe; this was the same number of bales that they were to have received at Brownsville; the agents of Le More & Co. (that is, Le More and Querouze) contested that that number of bales on Ouachita river was not equivalent in value to the same number at Brownsville, and they therefore claimed an additional quantity of over three hundred bales, to make up the difference; this claim the cotton bureau refused to allow; the 830 bales, however, were accepted under protest, and the parties representing LeMore &
331 Co., and Col. Broadwell, agreed to refer the difference on additional claim to arbitrators. It was so referred, and decided against Le More & Co. Le More & Co., not satisfied with this decision, were, at the time the matter was brought to my notice, endeavoring to get the award of the arbitrators set aside, and the case reopened. This they were endeavoring to do by an application to the general commanding the department. At the instance of Mr. La Salle, who was acting in concert with Querouze and Le More, I examined all the papers relating to the claim, and laid the matter before General E. Kirby Smith, who declined taking any further action in the matter, referring the party to Richmond. Copies of all these papers referred to were made out by Mr. Harris, or under his supervision, and compared with the originals by me, which papers were taken to Richmond by Mr. La Salle. I don't know what was the

result of the case. I don't think their claim was allowed. Subsequently the 830 bales referred to as on the Ouachita were seized and carried off by the United States naval forces. Le More & Co.
332 had paid an export duty on this 830 bales, for which they made a reclamation, after their seizure, upon Lieut. Col. Broadwell, chief of the cotton bureau, which was not allowed.

15. Do you know John A. Stevenson? If you do, do you know anything of the circumstances of said Stevenson acting as the agent of the so-called confederate government in a cotton transaction with the Louisiana State Bank? If you say you do, then please state what you know of a cotton transaction between said bank and the so-called confederate government, through said Stevenson, the nature of it, and the final disposition of it.

Ans. I do know John A. Stevenson. Stevenson, as the agent of the Louisiana State Bank, purchased a large amount of cotton in the neighborhood of Shreveport, in the extreme northwestern part of Louisiana. He, as agent of the bank, entered into an agreement with the cotton bureau to exchange bank cotton, amounting to about ten to twelve thousand bales, for over eighteen thousand bales belonging to the confederate government, lying on the Ouachita river. The conditions of the exchange were that Stevenson should obtain permission from the United States government to ship these
333 eighteen thousand bales to Europe, and that he was not to dispose of it in New Orleans. This was in the latter part of 1863. Stevenson obtained from Rhorer, sub-agent of McKee, at Alexandria, on an order from department headquarters of the trans-Mississippi department, C. S. A., planters' certificates for the amount of the cotton to be exchanged on the Ouachita, for which he receipted, as agent of the Confederate States. These certificates he carried to New Orleans, and he there endeavored to get permission of the federal authorities to ship the cotton to England, but failed, and on a subsequent visit to New Orleans for the same purpose, he also failed. Failing to comply with the conditions imposed by the contract for the exchange of cotton, the contract was rescinded, and the bank cotton was restored to the bank.

16. Please state whether the cotton of the Confederate States lying on the Ouachita river, a few miles below Monroe, at the Simmons plantation, in the winter of 1863 and spring of 1864, was not in such an exposed condition as that it would fall within the rule which allowed McKee to use his discretion in the disposition of it.
334 Ans It certainly was; the government cotton in the Ouachita river, in that locality, was regarded as almost valueless, so far as the confederate government was concerned.

17. Do you know whether the 830 bales referred to by you as having been transferred by the confederate government to G. A. Le More & Co., were ever sold by said so-called government to said Querouze, before or after the sale of the same to Le More & Co., either in exchange for other cotton or otherwise.

Ans. No; I never heard of anything of the kind, and I am very certain that this cotton was never transferred by the confederate

government to Querouze. If it had been so transferred, I was in a situation where I would have known it. It was never turned over to Querouze on his own account; if it ever was transferred to him, it was for account of Le More & Co.

Querouze was then at Shreveport, at this time acting as agent for Le More & Co. in this very transaction, and was present during the pendency of these transactions.

335 18. Please state what civil authorities are now controlling the country of western Louisiana, and how long.

Ans. The United States authorities are now controlling it, and have been since the time of the surrender, in the early part of June last.

Filed Sept. 19, 1865.

GEO. P. BOWEN, *Clerk.*

Exhibit A, referred to in the deposition of James W. Duncan.

OFFICE COTTON AGENCY, *Alexandria, Dec.* 30, 1863.

Maj. Gen'l R. Taylor, present.

GENERAL: On the 25th day of September, 1862, I was instructed by Col. A. C. Myers, quartermaster general, C. S. A., to ship all the hides which had been taken off at the gov't beef packery near this city, to Vicksburg, and thence to the C. S. tannery at Columbus, Georgia. In accordance with these instructions I seized and shipped as above 9,966 dry salted hides, weighing 453,453 pounds, which, at the price allowed by Q. M. gen'l, 17 c., amounts to seventy-

336 seven thousand eighty-seven dollars and one cent ($77,087 01.)

The hides were the property of Dr. R. A. Porter, of New Orleans, who was, at the time the hides were taken, in New Orleans, or without the confederate lines.

Dr. Porter is now here to receive the payment for his hides as above. I respectfully ask your advice as to how I shall pay him, in cotton in exposed localities or in money. I hold gov't cotton on the banks of Red and Washita rivers, which cannot be removed before next summer, and, with your approval, will pay Dr. Porter with a portion of it at the rate of 25 cents per pound, which is more than the cotton cost.

I am instructed by the hon'ble secretary of the treasury to confer with you upon all matters that relate to the preservation of the gov't cotton.

Respectfully, your ob'd't serv't,

A. W. McKEE,
Gen'l Agent to Purchase Cotton in Louisiana.

A true copy.

A. W. McKEE,
Gen'l Agent to Purchase Cotton in La.

337 [Indorsement.]

H'DQ'RS D. W. LA., *Alexandria, Jan'y 1st*, 1864.

There can be no doubt of the policy to pay the debts of the gov't rather in cotton than money, first, to save the money for other uses, where cotton cannot be employed, and to relieve the gov't from the risk of holding the cotton. Especially is this true if the creditors will be willing to receive cotton in exposed positions.

R. TAYLOR, *Maj. Gen'l.*

A true copy.

A. W. McKEE,
Gen'l Agent to Purchase Cotton in Louisiana.

Filed Sept. 19, 1865.

GEO. P. BOWEN, *Clerk.*

Cross-examination of James W. Duncan before George P. Bowen, United States commissioner, at his office in the city of Springfield, Illinois, on the 26th day of September, A. D. 1865.

338 Cross-examined by L. Weldon, esq., dis't att'y for the United States, and by C. Eames, esq., counsel for captors:

Ques. 1. Please state, according to the best of your recollection, the sources and grounds of your knowledge that the transfer contract made between John A. Stevenson and the confederate authorities was annulled.

Ans. Mr. Stevenson's own statements under oath, made before a general court-martial convened at Alexandria, in Louisiana, in July and August, 1864, for the trial of A. W. McKee. I was present at that trial in the capacity of counsel for Mr. McKee, and heard Mr. Stevenson testify, and heard his whole statements; part of them were in answer to my cross-examination of him as counsel as aforesaid. I also know that the cotton which was to have been transferred to the Confederate States government by Stevenson in exchange for Confederate States cotton on the Ouachita, was in the possession or under the control of the said Stevenson, at the date of the surrender of the forces of the trans-Mississippi department, and has been subsequently, in whole or in part, shipped to New Or-

339 leans by the said Stevenson.

Ques. 2. Referring to your answer to the 13th interrogatory in chief, please state whether, from the examination of the papers in the said claim of Jules Le More, as agent for the Havre house, or from any other source of information whatever, you had knowledge or reason to believe that Querouze was claiming for his own account, and not merely as agent for Le More.

Ans. The papers which I examined showed Le More & Co., of France, to be the claimants.

Ques. 3. Had you any knowledge or reason to believe at that time that Querouze either was at that time or had been before the owner of a lot of cotton at Brownsville, Texas.

Ans. I had no reason to believe he had, for I had never heard of any such thing.

Ques. 4. From your knowledge of the general course of business in the exchange by the confederate authorities of one lot of
340 cotton for another in the different localities, state whether in your judgment in the spring of 1864 two bales stored on the Ouachita river near Monroe would have been given by those authorities in exchange for one bale stored at Brownsville, Texas.

Ans. That would depend upon circumstances. All I know is this case, that came under my observation, wherein Le More claimed; Mr. Broadwell refused to allow anything more than bale for bale, and he was sustained by the arbitrators. As to the circumstances which would vary such action of the government as to exchange of cotton, if they wanted cotton to use immediately at Brownsville for military purposes, they might have given a premium two for one, but where they owed, or in liquidation of a previous debt, they would not be likely to do so. Thus in the case of Stevenson, in that inchoate exchange, he, Stevenson, was to receive more than bale for bale, but it was coupled with onerous conditions, which would require large expense if they had been fulfilled.

341 Cross-examined by Judge Logan, Gen. McClernand, and Wm. M. Springer for Le More & Co.:

Ques 1. Will you please state how and from whom you derive your information that the firm of G. A. Le More & Co., of Havre, France, sold gray cloth to the confederate government?

Ans. In the spring of 1864 Mr. La Salle, who was or had been quartermaster in the army of the Confederate States, placed in my hands a package of papers, which he desired me to examine in reference to some future action. I examined the papers; among them was a paper in the nature of an account, Le More & Co. against the confederate government, for gray cloth furnished by that house. Another source was a conversation with Mr. La Salle, who represented himself as the agent of Le More & Co.

Ques. 2. Can you give the words or substance of the account of Le More & Co. against the Confederate States?

Ans. I cannot. It was a paper showing the nature and amount of their indebtedness. I don't recollect dates or amounts. My
342 attention was not particularly drawn to that paper, inasmuch as the claim itself was not disputed. The difference between Le More and the cotton bureau was only as to the amount of the cotton to be given in liquidation of that claim—that is, the amount of cotton to be delivered on the Ouachita instead of at Brownsville.

Ques. 3. Have you any recollection whether the account stated where the gray cloth was sold or delivered?

Ans. No, sir. My impression is it was delivered at Brownsville, but I don't know as the account stated that.

Ques. 4. Do you know anything of the handwriting in which that account was made out, or of your knowledge, whether that account was presented by G. A. Le More & Co., of Havre? If so, how do you know it?

Ans. I know nothing about the handwriting of the account. The

gray cloth of which I have spoken was to have been paid for in cotton delivered at Brownsville, Texas. The confederate government failed to comply with the contract in respect to its delivery. The claim was then transferred to Shreveport for settlement. Lt. Col. W. A. Broadwell, chief of the cotton bureau, proposed to transfer to the claimants in liquidation of their claim the same number of bales (with a permit to export) on the Ouachita river, Louisiana, which they were to have received at Brownsville, to wit, 800 and odd bales. I forget the exact number. To this proposition it was objected by the claimant that that number of bales of cotton on the Ouachita were not equal in value to the same number delivered at Brownsville, and they claimed an additional number, over three hundred, to make up the deficiency. This was the point of disagreement between the cotton bureau and the claimants. The 800 and odd bales, however, were accepted under protest, and the parties agreed to refer the balance of the claim to arbitrators, which was done, and the claim rejected. The papers which I examined were the papers which were before the arbitrators. The object the parties had in view in placing the papers before me was to obtain from Gen'l Smith an opening or recision of the award, on the ground that the terms of reference had not been complied with. Gen'l Smith refused to take any action in the premises, and it was determined by the parties to refer the matter to Richmond. They had copies of these papers made out at the cotton bureau, where the originals seem to have been deposited or placed on file. Those copies I compared with the originals, and certified to their correctness. The account spoken of for gray cloth was among them. I was at that time Confederate States commissioner, and my signature and certificate was taken at Richmond as such as evidence.

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Ques. 5. Is all the knowledge you have on the subject of the gray cloth derived from those papers? and if from any other source, state what?

Ans. My knowledge is derived from those papers. I also had frequent conversations with Mr. La Salle, who placed the papers in my hands.

Ques. 6. Had you any other source of information as to the sale of gray cloth by G. A. Le More & Co., or the claim of G. A. Le More & Co. against the confederate government for gray cloth?

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Ans. I called upon Gen'l Smith in a professional capacity in reference to this claim, and represented to him that claimants thought they had been unfairly dealt with by Mr. Broadwell, in the matter of the arbitration, and called his attention to one thing in which they thought that Broadwell had acted dishonestly. I also referred to the fact that this indebtedness had been incurred for supplies furnished our army on the good faith of the government; that Le More & Co. was a wealthy and influential house in France, and were capable and had the means of doing much to impair the credit of the government abroad; and if they thought themselves unfairly dealt with in this transaction, I feared that our credit would suffer, and that it was bet-

ter the government should suffer pecuniarily than expose its fairness to suspicion. He assented to this, but said Le More & Co. had been paid all the gray cloth was worth, and he would have nothing to do with the matter. I had frequent conversations with those ac-
346 quainted with and friendly to Le More & Co., but I did not gain any information from them I did not have before. I also had a conversation recently with Mr. Black, of New Orleans, who was one of the arbitrators, in which Mr. Black spoke of the claim.

Ques. 7. Do you know G. A. Le More & Co., or any member of the firm?

Ans. No, sir. I don't believe I should know them if I saw them.

Ques. 8. Do you know Jules Le more?

Ans. I do not.

Ques. 9. Do you know Leon Querouze?

Ans. I have seen a gentleman in company with Mr. La Salle I supposed was him, and may have been introduced to him, but do not know it, or that I should know him if I met him in the streets.

Ques. 10. Besides the account you have before spoken of, what other papers were submitted to you by Mr. La Salle?

347 Ans. Some correspondence between the quartermaster who was to have delivered the cotton at Brownsville, and some others—I don't know whether purporting to be signed by Le More or Querouze—urging the delivery of the cotton on one part, and the excuses for its non-delivery on the other. And there was a number of papers relating to the arbitration. I don't remember just what they were.

Ques. 11. Do you know the handwriting of G. A. Le More & Co., or Leon Querouze?

Ans. I do not.

Ques. Do you then know that either of the papers was signed or written actually by G. A. Le More & Co., or by Querouze?

Ans. I only know they purported to be signed by one or the other, or by both, and were placed in my possession by a gentleman, Mr. La Salle, who represented himself to be the agent of G. A. Le More & Co., and who afterwards paid me my fees for certifying to
348 the correctness of copies of said papers.

Ques. 13. Do you know anything of the firm of Ed. Gantherin & Co., of New Orleans, of which two men by the name of Le More were members?

Ans. I have heard of such a firm, but I don't know the members composing it.

Ques. 14. Do you or not know that one or more men by the name of Le More were members, from information?

Ans. No, sir.

Ques. 15. Do you or not know that the authority of Col. Broadwell, chief of the cotton bureau, to sell and dispose of the cotton belonging to the Confederate States was generally recognized in that military district?

Ans. Col. Broadwell was regarded as having authority of Gen'l Smith to dispose of cotton, subject to the supervision of department

headquarters at Shreveport, but he had no authority from the
349 treasury department at Richmond to sell government cotton,
to which department all the cotton purchased in Louisiana by De Bow, McKee, and their sub-agents belonged.

Ques. 17. How are you able to say negatively that Col. Broadwell was not authorized by the treasury department at Richmond to dispose of cotton?

Ans. I derived my information from a letter addressed by Mr. Memminger, secretary of the treasury of Confederate States, to Gen'l Smith, in the latter part of summer or in the fall of 1863.

Ques. 18. Did you see the original letter from Memminger?

Ans. Yes sir.

Ques. 19. Can you state the contents of that letter?

Ans. I can state the substance. It stated in substance that he, Memminger, had received from A. W. McKee, his (Gen'l Smith's)
order, I think No. 35, creating a cotton bureau for the trans-
350 Mississippi department, and approving the action of Gen.
Smith so far as it looked to the preservation of government cotton. It stated further that Gen'l Smith would not interfere with the further purchase of cotton by the treasury agents, inasmuch as all the cotton already purchased and to be purchased by treasury agents in that department was pledged as a basis for certain financial arrangement of the government.

Ques. 20. Where did you see and get possession of that letter?

Ans. It was produced on the trial of A. W. McKee, before a general court-martial assembled at Alexandria, in August, 1864.

Ques. 21. By whom was the letter produced?

Ans. It was produced by the prosecution, it being called for by the defence. We had copies of it. A copy of the letter had been forwarded to Mr. McKee by Mr. Memminger himself. I was counsel for McKee in that trial.

Ques. 22. Was it not generally understood and recognized
351 that the military authorities had the right to use and dispose
of the cotton belonging to the Confederate States?

Ans. It was not so understood at Richmond; I mean, as to the cotton purchased by treasury agents.

Ques. 23. How was it understood in Louisiana?

Ans. Persons there, strictly military men, regarding the acts and orders of Gen'l Smith as the highest authority, and did not go beyond them.

Recross-examination by L. Weldon, esq., district attorney, in behalf of the United States:

Ques. 1. How far is it from Monroe, La., to New Orleans?

Ans. It is about 260 miles from the mouth of Black river to New Orleans, and about 175 miles from mouth of Black river to Monroe, La.—in all about 385 miles, I think.

Ques. 2. How long does it take to make that trip from
352 Monroe to New Orleans?

Ans. About three days, owing to boat and stage of water.

Ques. 3. Who employed you to look into the papers you have spoken of in reference to the claim of Le More & Co., and to wait upon Gen'l E. K. Smith, and who paid you for the same?

Ans. Major La Salle of the quartermaster's department. He contracted to pay a fee to myself and to a gentleman associated with me, for our services as counsel, which fee has not yet been paid, we not having called for it as he requested us to do. He paid me officially, for examining the papers and making certified copies of them as commissioner.

Filed Sept. 26, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Andrew W. McKee, in behalf of Withenbury and Doyle, taken before Hugh Madden, notary public, at his office in the city of New Orleans, Louisiana, on the 29th, 30th, and 31st days
353 of August, and the 1st, 2d, and 4th days of September, A. D. 1865.

Question 1st. What is your name, age, and place of residence, and occupation?

Answer. My name is Andrew W. McKee; my age is thirty-five years; residence, New Orleans; occupation, merchant.

Question 2d. What official position, if any, did you hold under the government of the so-called Confederate States during the years 1862, 1863, and 1864, or any part of them?

Answer. From October, 1862, until fall of 1864, I was the general agent of the treasury department of the so-called Confederate States to purchase, take care of, and dispose of cotton.

Question 3d. When cotton, after being purchased by yourself or sub-agents, was removed from the plantation where purchased, was it usual or necessary to give up or return to the planter or seller of the cotton the certificate of sale made to the government, made by said vendors.

354 Answer. It was neither usual or necessary, but when parties requested it, it was sometimes done, and during my absence, my sub-agents and clerks would sometimes do so, when parties requested it. All cotton purchased by me as agent of the treasury department of C. S. A. was held subject to the order of the secretary of the treasury, or myself.

Question 4th. Did you ever draw upon planters for cotton left in their custody after the same had been sold by them to the Confederate States treasury department? If so, to what amount, and in what manner?

Answer. I did frequently, to the amount of between twenty and twenty-two thousand bales. The manner in which I drew was by a simple order, dated "office cotton agency," wherever said agency was in the different parishes, although Alexandria, parish of Rapides, was my parent office, from which I drew generally for any cotton within my district, which comprised all of Louisiana west of the Mississippi river; said orders, in drawing for cotton, simply specified the number of bales I wished to draw for, named the party holding the

cotton in custody, and that it was a portion, or, as it sometimes
355 happened, the whole of the cotton held by the custodian or seller for account of the so-called Confederate States, signed by me officially, as the general agent of the Confederate States in Louisiana.

Question 5th. From the date of your appointment in October, 1862, until the time of your arrest and imprisonment by Gen. E. Kirby Smith in May, 1864, was there, in the district of Louisiana west of the Mississippi river, any other agent of the treasury department of the so-called Confederate States who was authorized or did purchase any cotton for account of said C. S. treasury department?

Answer. There was not; all cotton for account of said treasury department, between the dates above mentioned, was purchased through me and my sub-agents. Before I left Richmond, at the time of receiving my appointment as above, it was expressly agreed and understood in writing between the secretary of the treasury and myself that I, as the general agent, should in nowise be interfered with by any other person or agent, from the treasury department or the
356 war department. With this view, at my request, the said secretary of the treasury procured for me from Mr. Randolph, then acting secretary of war for the so-called Confederate States, written instructions to any military commander in Louisiana and Texas to assist me in any needed manner, including the exemption of myself and employees from conscription or military service; this was recognized by the military commanders west of the Mississippi river, up to the time of my arrest by Gen'l E. Kirby Smith; had such authority not been given me, I would not have accepted the appointment.

Question 6th. Did any person come from Gen'l E. Kirby Smith's headquarters at Shreveport to your office at Alexandria, with an order from said Gen'l E. Kirby Smith concerning the cotton east and south of Shreveport, in your department? If yea, who was that person? What was the order? and in what capacity such person claiming to be acting?

Answer. On the 1st Sept., 1863, I left my office in Alexan-
357 dria to go to Houston, Texas, on official business. On my return, after an absence of four or five weeks, my sub-agent, Mr. M. M. Rhorer, in charge of my office at Alexandria, exhibited to me duplicate receipts signed by John A. Stevenson, C. S. agent, for certificates of cotton purchases made by my sub-agent, Dr. C. G. Young, office at Monroe, Louisiana, calling for sixteen thousand nine hundred and eighty-nine bales of cotton (16,989) purchased by said Yovng under my directions, in the Washita valley, for account of treasury department of the so-called Confederate States, which certificate he, said M. M. Rhorer, had delivered to said Stevenson.

With these duplicate receipts was an order signed by command of Gen'l E. K. Smith, No. 641, directing said Stevenson to visit me and consult as to the best arrangements for disposing of "said Confederate States" cotton in the Washita valley, and directing him to take up said certificates of purchase, giving in lieu his own receipts, and then directing him, Stevenson, to proceed to Monroe, La., and

there further consult with my sub-agent, Dr. C. G. Young, and also accrediting him to Brig. Gen'l P. O. Hebert, then commanding
358 at Monroe, La., for any needed assistance he might require for the preservation of said cotton, to prevent its capture by the federal forces, or its loss to the so-called Confederate States. I annex as exhibits to my deposition copies of said receipts and orders, marked Exhibit A.

Question 7th. Did this action of your sub-agent, M. M. Rhorer, meet your approval? What was the date of Gen'l E. K. Smith's order to Stevenson? and what was the date of the duplicate receipts given by said Stevenson for said certificates calling for 16,989 bales of cotton?

Answer. It did not meet my approval; on the contrary, had I been present when Stevenson presented said order, I would have refused to obey it. I had no authority to do so, without express instructions from Richmond. My sub-agent, M. M. Rhorer, in delivering said certificates, went beyond his authority and my instructions. The date of said order of Gen'l E. K. Smith was 28th August, 1863, at Shreveport; the date of the receipts given by Stevenson in Alexandria was Sept. 4th, 1863. I annex copies.

359 Question 8th. Did the receipts so given by Stevenson to Rhorer cover all the cotton purchased by your sub-agent, Dr. C. G. Young, in the Washita valley? and if not, what became of the balance? and did Withenbury and Doyle receive any of said balance?

Answer. They did not; my said agent purchased over nineteen thousand bales, and said receipts called for sixteen thousand nine hundred and eighty-nine. The balance I had mainly used in payment of debts due by the C. S. government; among them I had agreed in August, 1863, to pay Withenbury and Doyle nine hundred and thirty-five bales, purchased from Dr. J. T. Simmons, and the certificates calling for which I had laid aside in my private desk prior to the time said Stevenson visited my office in Sept., 1863; the remainder I believe, were among my papers and documents which were seized by Gen'l E. K. Smith at the time of my arrest, and none of which were ever returned to me.

Filed Sept. 20, 1865.

GEO. P. BOWEN, *Clerk.*

Exhibit A, referred to in deposition of Andrew W. McKee.

[Copy.]

No. 641.] HEADQUARTERS DEPT. TRANS-MISS.,
Shreveport, La., Aug. 28, 1863.

360 SIR: You will proceed to Alexandria, and confer with Major A. W. McKee, in regard to the best arrangements for disposing of gov't cotton east and south of this place. You will receipt to Major McKee for the cotton purchased by Dr. C. G. Young, taking up and obtaining a transfer of the planters' receipts in lieu of your own.

You will proceed thence to Monroe, and investigate the condition of this cotton, conferring with Dr. C. G. Young, and take such steps as will prevent its capture by the enemy, its destruction by us, and consequent loss to us. You are hereby accredited to Gen'l Hebert, commanding at Monroe, who will furnish every facility in his power to accomplish the end in view, and will not burn the cotton referred to until further orders.

By command of— Lieut. Gen'l E. KIRBY SMITH.

(S'g'd) W. B. BOGGS.
Brig. Gen'l and Chief of Staff.

Capt. STEVENSON,
through Lt. Col. W. A. Broadwell.

A true copy:
J. H. STANLEY.
C. G. WELLS.
A. W. KEE, *Gen'l Agent.*

361 Indorsement: Transportation furnished in kind from Shreveport to Alexandria.

W. W. BARRETT, *P. Q. M.*

[Copy.]

OFFICE COTTON AGENCY,
Alexandria, Sept. 4, 1863.

Received of Major A. W. McKee, gen'l agent to purchase cotton in Louisiana, the sellers' receipt for sixteen thousand nine hundred and eighty-nine bales cotton, purchased for the Confederate States by Dr. C. G. Young, sub-agent for A. W. McKee. This transfer is made in accordance with the accompanying order from Lt. Gen'l E. Kirby Smith, No. 641.

(S'g'd) JNO. S. STEVENSON, *C. S. Agent.*

A true copy:
J. H. STANLEY.
C. G. WELLS.
A. W. McKEE, *Gen'l Agent.*

OFFICE COTTON AGENCY, *Alexandria, Sept.* 4, 1863.

Received of Major A. W. McKee, gen'l agent to purchase cotton in Louisiana, the sellers' receipt for sixteen thousand nine hundred and eighty-nine bales cotton, purchased for the Confederate States by Dr. C. G. Young, sub-agent for A. W. McKee. This transfer
362 is made in accordance with the accompanying order from Lieut. Gen'l E. Kirby Smith, No. 641.

(S'g'd) JNO. A. STEVENSON, *C. S. Agent.*

A true copy:
J. H. STANLEY.
C. G. WELLS.
A. W. McKEE, *Gen'l Agent, &c.*

Filed Sept. 20, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of John A. Stevenson, in behalf of Withenbury & Doyle, taken before Hugh Madden, notary public, at his office in the city of New Orleans, Louisiana, on the 5th day of September, A. D. 1865.

Question 1st. What is your name, age, occupation, and residence?

Answer. My name is John A. Stevenson; my age is forty-seven; occupation, commission merchant; residence, New Orleans, La.

Ques. 2d. Were you or not an agent of the La. State Bank in the years 1862, 1863, and 1864? If yea, did you purchase a large lot of cotton located on Red river for said bank?

363 Ans. I was; I did; I purchased between eleven and twelve thousand bales of cotton for said bank, and located the same in the vicinity of Shreveport, on Red river.

Ques. 3d. Did you or not, subsequently to the said purchase, conditionally exchange the cotton so purchased for other cotton belonging to the Confederate States, then lying in the Washita district? What were those conditions of exchange?

Ans. I did conditionally exchange it with the confederate authorities for cotton on the Washita. The conditions of exchange were that the confederate government were to put the Washita cottons in my possession, to give me permission to enter the federal lines to negotiate the sale of them, and to get permission of the United States authorities to bring the cotton within their lines and dispose of it. Until I got possession and permission to bring the same within the federal lines I would not nor did not relinquish my right in the Red

364 river cottons; I did make a special deposit of my title to the Red river cotton with a confederate officer, with the understanding that same was not to be used until I got bona fide possession of the Washita cotton and realized from it; I used all efforts in my power to get the permits to bring said cotton within the federal lines, but I was never able to succeed.

Ques. 4th. What evidence did you get from the C. S. authorities of the exchange of cotton, as aforesaid? and what title did you get to the Washita cotton?

Ans. I got an order from Gen'l E. K. Smith on A. W. McKee, of Alexandria, for the planters' receipts for the cotton on the Washita, the purchase of Dr. C. G. Young, treasury sub-agent of Confederate States for the purchase of cotton. I got the planters' receipts delivered to me by Mr. Rhorer, sub-agent, except for some which he did not have the receipts to give me. I gave a receipt for said receipts to Mr. Rhorer, sub-agent of said McKee.

Ques. 5th. Did you, or did you not, succeed in having all

365 the conditions fulfilled, permits, and so forth, by the federal authorities, necessary to the consummation of the proposed contract of exchange between you and the confederate government?

Ans. I did not fully succeed. The main condition was that I was to get possession of the Washita cotton, and realize upon it, which I never did get.

Ques. 6th. Did you or not, as agent of the La. State Bank, receive from some agent of the C. S. government the sellers' receipts

for the cottons on the Washita, for which you proposed to exchange the cotton on Red river, purchased by you for the bank? If yea, from whom and when?

Ans. I have previously stated that I received the receipt of the planters for the Washita cotton from Mr. Rhorer, sub-agent of A. W. McKee, except the receipts for some lots mentioned in the list which Mr. Rhorer did not have in his possession; among those lots which were on the list, but for which the receipt was not delivered to me, was the Simmons cotton, of some nine hundred and
366 odd bales. I received these cotton receipts as the agent of the Louisiana State Bank.

Ques. 7th. Was the exchange of cotton alluded to above, between you and the confederate government, carried into effect by you, or was it subsequently cancelled?

Ans. I have previously stated that I did not get said cotton into my possession so as to realize from it, which was the main condition of the exchange. I received back the title papers for the cotton on Red river, which I had deposited specially, and continued to take care of my own cotton, abandoning the former project of exchange. Pending my negotiations within the federal lines, the confederate authorities had guaranteed me not to burn or impress any of my cottons on Red river, but previous to my return within the confederate lines, and during my abscence, the confederate government had issued orders and burned a large amount of cotton, by which I lost some thirty-five hundred bales of the Red river cotton. I claimed this amount from them in good faith, but I never got them.

367 Ques. 8th. Was the exchange alluded to above, between you as agent of the bank and the confederate government, considered to be of mutual advantage to the parties.

Ans. I considered it a good trade for the bank, or I would not have made it. I presume the confederate government thought it for their interest, or they would not have made it.

Filed Sept. 20, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Andrew W. KcKee, in behalf of Withenbury & Doyle, taken before Hugh Madden, notary public, at his office in the city of New Orleans, Louisiana, on the 5th, 6th, and 7th days of September, A. D. 1865.

Question 1st. Did Jno. A. Stevenson ever present himself at your office, in Alexandria, as an agent of the Louisiana State Bank, ask for cotton to be turned over to him as such agent, or did he ever show you any orders from Gen'l E. K. Smith, or from the so-called cotton bureau at Shreveport, ordering you to turn over any cotton to him as agent of said Louisiana State Bank?

368 Answer. Neither John A. Stevenson or anybody else ever presented themselves at my office as agent or agents of the Louisiana State Bank. The only manner in which John A. Stevenson ever had any official business in my office is fully shown

and indicated in the General E. K. Smith order No. 641, and the receipts given by said Stevenson, as given by me in a previous answer.

Question 2. When did you first agree to transfer to Withenbury & Doyle the nine hundred and thirty-five bales of cotton on the Simmons plantation, and why did you agree to deliver it?

Answer. The services of their boats, I think, ended in 1863, in the month of April. I then agreed to pay them in cotton, if money was not soon forthcoming. In August, 1863, not having received any funds wherewith to pay them, and being advised by the secretary of the treasury and the military authorities in west Louisiana, that certain portions of my cotton purchases were at that date in a precarious and exposed situation, which would necessitate the
369 burning of the same in case of a federal raid, I did agree to pay to the said Withenbury & Doyle cotton for their account, if they would take it in the said exposed localities. They agreed to do so, and I paid them the Simmons crop of cotton on the Washita river, agreeing not to burn the same, and furnish them a bill of sale whenever they desired it, provided Gen'l R. Taylor, with whom I was instructed to consult, and who was in command of west district of Louisiana, headquarters at Alexandria, approved of my paying the debts of the government in cotton lying in exposed localities in preference to money. I frequently consulted with Gen'l R. Taylor, who fully approved of my doing so.

Question 3d. Was there any agreement or contract between you and Withenbury & Doyle, before they rendered services with their steamboats and barges to the Confederate States government, that they were to be paid for these services in cotton? State fully all you know of this matter.

Answer. At the time the services were rendered, which
370 begun about November, 1861, and continued, at intervals, until the spring of 1863, there was no contract or bargain made how they were to be paid or how much they were to be paid. The boats were required to do the work with the understanding that they would be paid customary prices. I occasionally paid them some money on account, to assist their running expenses. On settlement, in the spring of 1863, there was a balance due them for services rendered under my direction of between eighty and ninety thousand dollars. I cannot remember the exact amount. The larger portion of said balance was due to W. W. Withenbury, for services rendered in the winter of 1861, and early spring of 1862, at which time the so-called Confederate States treasury notes were nearly at par with specie and Louisiana bank money. For these reasons and those of friendship, which I held towards Withenbury & Doyle—having been raised with Doyle from boyhood—I was desirous to see them paid in the manner most agreeable and remunerative to themselves, and as they preferred their pay in cotton, and I had full authority to do so, I settled their account, and paid them in cotton, as I have before stated.

371 Question 4th. Did you or not set apart the Simmons lot of

cotton for a settlement with Withenbury & Doyle, some time before you made the bill of sale to them? If yea, what was the time, and why was the making of the bill of sale delayed, and when was the bill of sale made?

Ans. I made the settlement and agreement as answered in my last answer, about the 22d August, 1863, at which time I took out of the general pile of cotton vouchers that for the Simmons crop, and one or two others, smaller lots, and placed them in my private desk, and informed my sub-agents and clerks, Mr. M. M. Rhorer and Adolph Rachel, that they were set apart for Withenbury & Doyle. One of the conditions made with Withenbury & Doyle was, that if they did not furnish me with satisfactory evidence from the U. S. military authorities commanding department of the gulf that their (W. & D.'s) right to this cotton would be respected, in case of an invasion by the federal forces, that I held the privilege of burning this cotton, which my instructions from Richmond required me to do. The rivers in western Louisiana being then very low, and it being generally
372 understood that the federals would not make an advance into that section of country until the next spring, Withenbury & Doyle replied that they would attend to it in time, and when either of them was ready to go to New Orleans for this purpose, they would call upon me for the necessary papers connected with the sale, and through me, procure a passport to pass the confederate lines. About the 5th or 6th January, 1864, R. W. Doyle, for his firm, called upon me, stating he was then ready to visit New Orleans for the purpose of furnishing me with the evidence above referred to. I furnished him with a bill of sale of the cotton, gave him an order for the same, and also a letter to Brig. Gen'l William R. Scurry, then commanding the C. S. outposts in the Atchafalaya river, upon which Gen'l Scurry permitted him to pass the lines. From August, 1863, I considered the cotton so set apart for the Withenbury & Doyle at their risk. Had it been burned by accident, the loss would have been upon them, which I so informed my clerks, that I might have a valid witness to my agreement with them. About the 6th March, 1864, when
373 in Point Coupee parish, at Waterloo, on the Miss. river, I again met Doyle, who showed me a protection paper from Gen'l N. P. Banks, com'd'g dept. of the gulf, which agreed to respect their rights in said cotton, which was satisfactory to me; otherwise the cotton would have been burned within ten days from that date, as was large amounts of other cotton.

Question 5th. Can you state whether any other steamboats were paid, or to be paid, in whole or in part, for their services with cotton?

Answer. My sub-agent at Monroe, La., Dr. C. G. Young, was authorized to ship me cotton from the Washita river to Red river, at Alexandria, for the purpose of being transferred to Texas, for which he was authorized to pay in cotton.

Question 6th. Do you know whether General E. K. Smith, after he organized a cotton bureau at Shreveport, approved of the payment of debts due by the Confederate States for transportation services with

cotton? Have you any documents, blanks, or notices, of any
374 kind, which the mode of paying such debts? If so, append them, or copies of them, to your depositions.

Answer. I know that Gen'l E. Kirby Smith did approve and make an order authorizing payments in cotton. I was notified of it officially from department headquarters, and furnished with a number of blanks, which, when filled out, would furnish to the holders a permit for the exportation of the cotton so received in payment. Upon the back of these blanks is printed a correct copy of Gen'l E. K. Smith's special order No. 118; the appended blank, marked Exhibit B, is one of the originals furnished me.

Question 7th. Look at the paper now handed you, and say if you know anything of its origin, and state fully all you know about it.

Answer. I have examined said paper, which I annex to my deposition as Exhibit C. It is an original letter from my sub-agent, C. G. Young, at Monroe, indorsed at Monroe, by Brig. Gen'l
375 P. O. Hebert, C. S. A., sent to me for my approval and indorsement. I recognize the signature of C. G. Young, Brig. Gen'l P. O. Hebert, and my own as genuine. This letter was filed in my office, and an official copy forwarded to said C. G. Young.

Filed Sept. 20th, 1865.

GEO. P. BOWEN, *Clerk.*

Exhibit B, referred to in deposition of Andrew W. McKee.

NIBLETT'S BLUFF, , 186 .

As agent of I certify to have received from Mr. , under his contract with Maj. A. W. McKee, bales of cotton, all of which will be sent forward on account of the government to Houston.

——— ———.

ALEXANDRIA, LA., , 186 .

As indicated by the above certificate, Mr. has transported bales of government cotton to Niblett's Bluff, for which service I have given him bales as his compensation. The order of Lt. Gen'l E. Kirby Smith, No. 118, herewith, applies to this
376 cotton. Referred to the chief of the cotton bureau in Texas.

——— ———.

HEADQUARTERS COTTON BUREAU,
Houston, Texas, , 1863.

Approved and referred to officer authorized to exempt cotton from impressment. The cotton protected by this certificate, will be held exempt at such points as the holder may offer to export the same. The said officer will take up and cancel this certificate and include the transaction in his report to this office.

Indorsed on back:

HEADQUARTERS DEPARTMENT TRANS-MISS.,
Shreveport, La., 24th Aug., 1863.

[Special orders No. 118.—Extract.]

* * * * * * * *

III. Any person who will transport government cotton to Niblett's Bluff from the following parishes, viz: St. Landry, Avoyelles, and Rapides, west of Red river, and Wirne, Ouachita, Caldwell, Franklin, and Catahoula, east of Red river, receiving cotton
377 in payment, will be entitled to a permit to export the same to such an amount as may be received for such service.

By command of—

Lieut. Gen. E. KIRBY SMITH.

(Signed) S. S. ANDERSON, *Ass't Adj't Gen'l.*

Filed Sept. 20, 1865.

GEO. P. BOWEN, *Clerk.*

Exhibit C, referred to in deposition of Andrew W. McKee.

PRODUCE LOAN OFFICE, *Monroe, La., August 1st*, 1863.

Major A. W. McKee, gen'l agent for purchasing cotton in Louisiana and Texas, Alexandria, La.

DEAR SIR: After the fall of Vicksburg Gen'l P. Hebert, commanding this district, advised me to remove all the cotton possible from the east to the west side of the Ouachita river, and as far in the interior as I could; and as I had no fund to draw upon to pay for transporting it, he urged me to make an arrangement to pay for the transportation in cotton. He thought this better for the govern-
378 ment than to pay in money; far as the cotton east of the river would be burned upon the first approach of the enemy, its removal a few miles west of the river might save it, and if so, all the government should have removed, would be that much saved; and if finally lost west of the river, government would lose nothing by its removal, since it will have paid the expense in part of the cotton, and pay out no money. My judgment approved this plan and I adopted it, and am having all I can of the cotton in the more exposed situations, as on the river and along the railroad, moved and shedded from 4 to 8 miles west of the river.

For the removal of that on the east bank and within one and a half miles, I pay one-fifth of the cotton; for that on the railroad and within three miles of it, I pay one-fourth of the cotton. I wrote you for instructions immediately upon making the arrangement for teams, that if you thought proper you might give me your views upon the subject, intending, should you manifest any objection, to stop proceedings at once, having in my contracts reserved the
379 right to do so at any time. As in your answer you leave the matter to my own discretion, I am proceeding to move the cotton as above stated, as fast as means for transporting it can be pro-

cured; but even at this enormous price it is difficult to procure teams. It was the best arrangement I could make to get any large quantity moved. With only a few exceptions I have not been able to have the cotton moved by the planters. In a few cases they have been patriotic enough to move the cotton sold to the government, at my suggestion, without charge. This cotton was purchased at prices that will enable us to pay $\frac{1}{3}$ and even $\frac{1}{4}$ for its removal, and then not reach the limit we were authorized to pay. I shall ask Gen'l Hebert to append a statement sustaining my action in this matter.

Very respectfully, &c.,

C. G. YOUNG.

[Indorsements.]

H'DQ'RS SUB-DIST. OF NORTH LA.,
Monroe, La., Aug. 3, 1863.

Under the circumstances I think this arrangement the best Mr. Young could have made.

P. O. HEBERT, *Brig. Gen. P. C. S. A.*

OFFICE COTTON AGENCY, *Alexandria, Aug.* 19, 1863.

380 The suggestions made in the within letter are fully approved. In addition, Dr. C. G. Young, sub-agent at Monroe, is authorized and directed, if practicable, to employ teams or steamboats to remove C. S. cotton now adjacent to the Washita and Little rivers, below Monroe, purchased by him, to me at Alexandria, paying for said service in cotton, bale for bale, if by teams overland, and one bale for each two bales if by steamers, which mode of payment is preferable, as this agency has more cotton in exposed localities than money.

A. W. McKEE,
C. S. Gen'l Agent to Purchase Cotton in Louisiana.

Filed Sept. 20, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Charles Jones, in behalf of Withenbury and Doyle, taken before Hugh Madden, notary public, at his office in the city of New Orleans, Louisiana, on the 7th day of September, A. D. 1865.

Question. What is your age, name, residence, and occu-
381 pation?

Answer. My name is Charles Jones; my age is fifty-five years; I am a resident of parish of Catahoula, La.; I was a planter before the war.

Question. Have you or not, at any time during the year 1864, and more particularly in the months of February, March, and April, 1864, been acquainted with the value of cotton on the Washita river, in the vicinity of Monroe, La.? If yea, state your means of knowing said value, and what that value was at that time.

Answer. I purchased cotton in the months of March, April, and May on Black and Little rivers, continuation of the Washita, for which I paid one hundred dollars per bale in U. S. treasury notes.

I purchased in the immediate neighborhood of Simmons's plantation, below Monroe, in April or May, for which I paid four hundred dollars a bale in confederate money. Confederate money at that time was worth about ten cents on the dollar. I contracted to buy
382 some above Monroe *Monroe*—for seventy-five bales of cotton in Union parish, for fifty dollars per bale in U. S. treasury notes. This was in the month of May or June, 1864. At no time during this period, between February and June, I think, cotton was worth more than from eighty to one hundred dollars per bale for the best cotton on the Washita river. After the U. S. gunboats visited Monroe, in April, 1864, and captured and carried away cotton, the price of cotton enhanced on account of a trade opening between Natchez and the Washita river, and there being more facilities for getting it out, and less hindrance on the part of the confederate authorities. I think my opportunities for knowing the price of cotton was as good as any one in the country. The cotton on Black and Little river was more valuable, because it could be more easily removed on flat-boats during the night to the federal lines; while that near Monroe was difficult to get out, and was consequently of less value. I know nothing of this suit, and have no interest in it.

Filed Sept. 30, 1865.

GEO. P. BOWEN, *Clerk*.

383 Deposition of Hugh B. Walmsley, in behalf of Withenbury & Doyle, taken before Hugh Madden, notary public, at his office in the city of New Orleans, Louisiana, on the 7th day of September, A. D. 1865.

Question. What is your name, age, residence, and occupation?

Answer. My name is Hugh B. Walmsley; my age is thirty-one; residence, Natchitoches, Louisiana; occupation, merchant.

Question. Were you or were you not on the Washita river, in the vicinity of Monroe, La., in the months of January, February, March, and April, 1864? If yea, what was your business there? Were you acquainted with the value of cotton then and there? If yea, state what you know of that value.

Answer. I was there in February, March, and the beginning of April, 1864. My business there at the time was attending to the cotton business as agent for others. I was acquainted with
384 the value of the cotton then and there. I bought and sold cotton there and then. I paid from twenty-five to thirty cents a pound in confederate money, which amounted to one hundred to one hundred and twenty-five dollars per bale. I bought said cotton about twenty to thirty miles from Monroe, in what I considered a safe locality. It was good cotton, and in good condition. I bought about thirty or forty bales for U. S. treasury notes about the month of April, 1864, after the U. S. gunboats had left Monroe, at one hundred dollars per bale. This was located on the river, fifteen miles above Monroe. I know where the Simmons plantation is, and would not consider cotton on said plantation, at the time above stated, of any more value than what I then bought, as I have stated. I would say the values were about the same.

Question. Was it, or was it not, generally known and talked about, to your knowledge, that the cotton on the plantation of said Simmons had been or was sold to the so-called Confederate States gov-
385 ernment?

Answer. I believed from general report that it was government cotton.

Question. Did you or not, in the month of March, 1864, see Mr. Querouze and Mr. Jules Le More at or about Monroe, La.? Do you know what they were doing there? Did they go back and forward from Monroe to Shreveport separately or together? and state all you know about them.

Answer. I saw them together at Monroe in the month of March, 1864. I think one or both of them went to Shreveport, and returned in said month of March. I understood from them that they were there for the purpose of attending to and receiving cotton. I saw them in company with John A. Buckner, major in Confederate States army.

Filed Sept. 20, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Nathaniel P. Banks, in behalf of Withenbury & Doyle, taken before Hugh Madden, notary public, at his office in
386 the city of New Orleans, Louisiana, on the 8th day of September, A. D. 1865.

Question. State your name, age, and residence.

Answer. My name is Nathaniel P. Banks; forty-nine years of age, and at present in New Orleans; but am a citizen of Mass.

Question. State whether or not you have been in the command of the U. S. forces in the department known as the department of the gulf? If yea, whether, during the time of such command, you met and knew Capt. W. W. Withenbury? Where did you know him first? How did you make his acquaintance, and what was the result of that acquaintance? State fully everything relating to your connexion with said Capt. Withenbury, from first to last.

Answer. I was in command of the department of the gulf, with my headquarters at New Orleans, from December, 1862, till
387 October, 1864. I met Captain Withenbury in the spring of 1863, while the army under my command was in the occupation of Alexandria, La., on Red river. He was recommended to me by persons in whom I had entire confidence, as a loyal man. He rendered valuable services to the government in that campaign, and I had no reason whatever to distrust his loyalty or patriotism. While in the occupation of that country, knowing it to be temporary, I did not encourage any person to take the oath of allegiance, or to commit themselves in any manner whatever to the government of the United States. Neither did I request or advise them to follow the army when it left for Port Hudson. I thought it best for the service of the government that every person should do as he pleased in that regard. It was no worse to have friends in that country after the army

had left than to have enemies. I made this statement to everybody, among others to Captain Withenbury. In addition, I gave him a pass through the lines of the army for the purpose of receiving from him, at any time thereafter, information as to the movements
388 of the enemy, or on other subjects useful to the government. It was understood by me that he was to remain there for that purpose, as well as to endeavor to protect and save his property until the army should return again. In the spring of 1864 I met him again, according to his promise, and under similar circumstances, and his conduct confirmed my confidence in his loyalty and patriotism. Capt. Withenbury, from time to time, gave me information and advice in regard to the enemy, the character of the country, and the sentiments of the people, which was of importance, and upon which I relied with entire confidence, and never had occasion to distrust him. Whatever he did, so far as I was concerned, was from his own choice, and not from compulsion. I consented to his remaining in the country after the army left it in 1863, believing that he was willing, and that it was consistent with his interest to do so. This was advantageous to the United States government, and if he felt it a safe course for him, was consistent with both my duty to the government and the people. His assistance during the campaigns
389 of 1863 and 1864 was very important to the government, and seemed to be dictated by a patriotic consideration for the interests of the country. I never had reason to doubt his integrity as a man or his patriotism as a citizen in the slightest degree, but, on the contrary, all I have known of him confirms my opinion of him formed upon our first meeting. Capt. Withenbury made known to me, at our first interview in 1863, that he had a considerable amount due him from the people in the Red and Ouachita river country for the services of his steamboat, and also that the rebel government owed him largely for the services which they had forced him to render with his steamboat, and he asked me for permission to pass into the rebel lines for the purpose of protecting his interests and property, he promising me, in return for such pass, he would render the United States government every service in his power during my absence with the army, and would meet me promptly on my return with the U. S. forces to occupy the country; he stating to
390 me at the same time that unless I permitted him to pass through our lines before the rebels learned that he was in consultation with me, all his interests would be sacrificed and all his property destroyed or taken from him by the rebels, but if allowed to go out of our lines, he could do the United States government much good service, and probably save his property, the fruits of many years' hard labor. Consequently I gave him a pass through our lines, in order to secure his services to the government, as well as to render him all the assistance in my power to save his property, as I considered him entitled to all the protection for his property that any other truly good loyal citizen could claim. He met me at Alexandria on my return with the army, in March, 1864, and accompanied me as pilot on my headquarters transport as far as Grand

Ecore, where I left the river. He gave me, on the way from Alexandria to Grand Ecore, much useful information with regard to the country and people on that route. And at Grand Ecore, before we parted, he furnished to Gen'l Stone, of my staff, several useful
391 and important maps of the country, besides making sketches of difficult and dangerous portions of the river, thus evincing a desire to do all in his power to aid the government, notwithstanding much of his property had been destroyed by the rebels since 1863, and he had been severely persecuted by the rebels for his loyal sentiments.

Question. Please state do you know Capt. R. W. Doyle; if yea, in what capacity have you known him?

Answer. Capt. Doyle came to New Orleans from Alexandria, in January, 1864, and brought important information from that country, and through reliable citizens here, he communicated the same to me for the benefit of the government. Capt. Doyle, as a practical Red river steamboatman, accompanied me on my headquarters transport to Alexandria, in March, 1864, and from the knowledge I have of him, I regard him as a loyal man, and am satisfied that his object in coming out of the rebel lines to this city in 1864,
392 was to bring valuable information to the government, and at the same time do what he could to protect the interests of himself and Captain Withenbury.

Filed Sept. 20, 1865.

GEO. P. BOWEN, *Clerk.*

Deposition of Andrew W. McKee, in behalf of Withenbury and Doyle, taken before Hugh Madden, notary public, at his office in the city of New Orleans, Louisiana, on the 8th day of September, A. D. 1865.

Question. Have you documents in your possession from the secretary of the treasury at Richmond, or any other written documents to which you have referred in your answers? If yea, annex them to your deposition. If you have them not, state to the best of your knowledge where they are.

Answer. At the time of my arrest in May, 1864, all of my papers and documents, official and private, were forcibly seized and
393 taken possession of by Gen'l E. Kirby Smith; at the time my court-martial trial in the July and August following, such portions of them as referred to the authority vested in me and instructions given me by the sec. of the treasury at Richmond, Virginia, were returned to my attorneys, and by them filed in the record of said court-martial trial. I made repeated applications to the Confederate States authorities to return me said documents and papers, which they refused to do, nor do I know what has become of them. About August, 1864, one of my sub-agents at Shreveport was appointed my successor in office by P. W. Gray, the then agent treasury department for all the so-called Confederate States west of the Miss. river, but I have a document written at my suggestion by said P. W. Gray and J. T. Belknapp, to the military authorities govern-

ing said department, asking for all the papers and documents taken from me, to the end that my accounts might be adjusted and settled, as will be seen by the indorsement on said document, which I present as an exhibit to my deposition. marked Exhibit D, the signatures on which I know to be genuine.

394 Said military authorities refused to deliver said documents until after my trial before a civil court, which subsequently took place in April, 1865, and at which I was fully acquitted; and immediately I again made application for said papers and documents, and was again refused.

Question. Do you know anything of the value of cotton in the vicinity of Monroe on the Washita river, in the months of March and April, 1864? State all you know and your means of information.

Answer. I do; during all the time of my agency for the treasury department, it was part of my duty, and through me of my agents, to keep fully posted and report to Richmond all the information which I could gather, as to the quantity of cotton, the price at which it was selling, what kind of money, specie, federal, or confederate currency or bonds, and, in fact, complete statistics. I know that sales have been made in the months of February and March, 1864, on

395 the Washita river, below Monroe, on Little river, a branch of Ouachita, and in Red river, below Alexandria, at the price of fifty to sixty-five dollars per bale in U. S. currency. One of my agents on the Washita, below Monroe, reported one sale to me of two hundred and thirty bales superior cotton at seventy dollars per bale, which is the highest price up to the middle of March, 1864, I was ever advised of; my means of knowledge were beyond that of any other person in the State of Louisiana.

Filed Sept. 20, 1865.

GEO. P. BOWEN, *Clerk.*

Exhibit D, referred to in the deposition of Andrew W. McKee.

TREASURY AGENCY, *Marshall, Nov.* 24, 1864.

J. T. Belknapp, Esq., Agent Produce Loan.

SIR: I have the honor to enclose form of abstract of cotton purchased, and disposition made of same, which you will fill up and forward to this agency.

The information asked for is required by the chief of the

396 produce loan office, Richmond. Your early attention is desired. Let your report be up to the 1st inst., in duplicate.

Respectfully, your ob't serv't,

P. W. GRAY, *Agent Treas'y Dep't.*

Brig. Gen'l W. R. Boggs, Chief of Staff, Dep't H'dq'rs.

SIR: Respectfully referring to the above instructions from the trea'y dep't, I have to request an order for the papers in the hands

of the court, on trial of Mr. McKee, at Alexandria, as essentially necessary to furnish the statement called for.

Very respectfully, your ob't serv't,

J. T. BELKNAPP, *Gen'l Produce Ag't, La.*

Shreveport, Nov. 30, '64.

Indorsement: J. T. Belknap desires an order on the "court" for papers in McKee case, &c.

H'DQ'S, T. M. D., SHREVEPORT, *Dec.* 8, '64.

Respect'y ref'd to Lt. Gen'l Buckner. It is supposed that
397 the papers referred to have gone to Richmond with the proceedings in this case. If they have not, the originals or official copies should be sent Mr. Belknap.

By order of Gen'l Smith.

W. R. BOGGS, *Brig. Gen. and Chief of Staff.*

H. Q., D. W. LA., ALEX., *Dec.* 11, 1864.

The record of the court-martial in the case of A. W. McKee is now in the hands of the C. S. district att'y, who is preparing for the trial of McKee. As soon as returned to this office, any papers relating to the matter will be furnished, (or copies thereof.) Whenever the record is forwarded, it will be through dep't h'dq'rs. It will be retained until after the trial of McKee, as the original papers are necessary in his prosecution. Respectfully,

J. B. BUCKNER, *L't Gen'l Com'd'g.*

H'DQ'RS., T. M. DEP'T, *Dec.* 14, '64.

Resp'f'y ref'd to Mr. Belknap.

W. R. BOGGS, *Brig. Gen. and Chief of Staff.*

Filed Sept. 20, 1865.

GEO. P. BOWEN, *Clerk.*

398 Deposition of James P. Foster, in behalf of Withenbury & Doyle, taken before David Sheeks, clerk of the circuit court of Monroe county, Indiana, at his office in Monroe county, Indiana, on the 15th day of September, A. D. 1865.

Int'y 1. Please state in what capacity you were acting in the month of April, 1864, on the Ouachita and Black rivers.

Answer. My rank in the United States service is lieutenant commander. At the time referred to I was the commander in chief of the Black River and Ouachita expedition.

Int'y 2. If you took any cotton from the plantation of Dr. Simmons or Tatum and Simmons on the Ouachita river, please state how much you took; how it was marked; who claimed it; what the claim was; from whom did the claimant assert he derived title? how did he pay for the cotton? and did he show you any papers? and if so, what were their contents.

399 Answer. From the best of my recollection, I took, or caused to be taken by the commanders of some of the other vessels under my command, a number of bales of cotton from the plantation

of Simmons. How many bales were taken I know not, neither do I recollect who the claimants were; neither do I know anything about the marks, as I did not examine all the cotton, but the parties who took the cotton on board reported them to be marked C. S. A. All I saw was so marked. No claimant presented himself to me except as hereinafter stated.

Int'y 3. If you met a Frenchman about that time called Le More, please state what claim he made to this cotton; from whom did he assert he purchased? what did he pay for it? in what did he pay? gold, greenbacks, or goods? If he made any sworn statement, please append it as a part of your answer to this interrogatory.

Ans. I met a Frenchman called Le More. I do not recol-
400 lect fully what claim he made. I think he asserted that he purchased from different parties, the names of whom I do not recollect. According to his own affidavit, the cotton was paid for in contraband goods; gray-back soldier's clothing and other articles. Four hundred bales, which lay below the largest pile of cotton, he said was his own private cotton, and that he paid twenty cents per pound for it in gold. He made a statement to me in the presence of three or four witnesses, which I reduced to writing, and he swore to it. This statement I sent to Admiral Porter, and therefore cannot append it to this. I cannot make a full and complete statement without my books and papers, which are not here.

Int'y 4. Was there any other claimant for any of this cotton than Le More? If so, who was it, and what was the nature of his title?

Answer. I do not recollect of any other claimant. but heard from various sources afterwards that there were other claimants. I do
401 not know anything of the nature of the title they set up.

Filed Sept. 23, 1865.

GEO. P. BOWEN, *Clerk.*

Letter of Rear-Admiral Porter to Judge Treat.

MISSISSIPPI SQUADRON, FLAG-SHIP BLACK HAWK.
Off Alexandria, La., Mar. 24, 1864.

SIR: I have the honor to report for adjudication and condemnation two thousand one hundred and twenty-nine bales of cotton, 28 barrels of molasses, and 18 bales of wool, captured from rebels, and belonging to confederate government. This cotton, wool, and molasses was captured in presence of the following vessels, which are all entitled to share in the prize. I would respectfully request that the cotton may be sold as soon as possible, as it is badly baled, and it may be accidentally burnt and lost to the navy. I also request that previous to being sold it may be advertised in the Cairo papers. Vessels entitled to share: Black Hawk, Eastport, Lafayette, Neosho,
402 Ozark, Choctaw, Osage, Chillicothe, Louisville, Carondelet, Benton, Pittsburg, Mound City, Essex, Lexington, Wachita, Fort Hindman, Cricket, Gazelle, and General Bragg.

Very respectfully, your obedient servant,

DAVID D. PORTER, *Rear-Admiral.*

Hon. S. W. TREAT,
United States District Judge, Springfield, Illinois.

Report of Rear-Admiral Porter to Secretary Welles.

MISSISSIPPI SQUADRON, FLAG-SHIP CRICKET,
Off Alexandria, La., May 11, 1864.

When I came into this river the rebels commenced burning cotton, as they always have done when our forces have appeared, and I ordered all cotton found lying along the banks of the river to be taken charge of, to be sent to Cairo for adjudication, when it was the property of the rebel government or its officers, and to be receipted for when the property of private individuals. When private individuals (loyal) made objections to the cotton being taken, saying they had no fear of its being molested, it was not troubled, and was generally burned.

In all cases when persons came to me with claims, I either de-
403 livered the cotton to them, or gave them receipts for it, instructing them how to get it in Cairo without being put to the expense even of transportation. Applications were daily made to me to take possession of cotton, the parties being willing to abandon it to the navy, all of which applications I declined acceding to, not intending to have anything to do with matters of a private nature, and not having the means of transportation. On my arrival here I found a store-house filled with C. S. A. cotton, among which were three lots (formerly rebel cotton evidently) claimed by private individuals. When satisfied that they had paid for the cotton, I returned it to them, or gave them the necessary document to enable them to get it. In all cases the fairest dealings have existed towards all persons, which every one here interested will acknowledge, and if some of those concerned may have to go to Cairo to secure their rights, they are well satisfied to have escaped from the indiscriminate seizure which was made by the army. I decided that I had a right to take all rebel government cotton, or that of persons in arms against the

Union, for this is truly an enemy's country in every sense of
404 the word, and to have left the means of carrying on war in their hands, would have been anything but patriotic.

I am, &c., DAVID D. PORTER, *Admiral.*

Hon. GIDEON WELLS, *Secretary of the Navy, Washington, D. C.*

Report of Rear-Admiral Porter to Secretary Welles.

MISSISSIPPI SQUADRON, FLAG-SHIP BLACK HAWK,
May 31, 1864.

At different times since I took command here 8,000 bales of cotton have been seized, taken from the bank, or found abandoned, or was the property of the so-called confederate government. In all cases of the kind such cotton has been sent to Cairo to Capt. Pennock, who receipts for it, registers it in his office, subject to the inspection of any one, reports it with the accompanying papers to the district court, and when the marshal receives it and receipts for it, our connexion with the matter ceases. I think the course pursued by the navy is the only just and proper one, at least it is fair to pre-

405 sume that claimants are satisfied with it, as out of about 8,000 bales, not one thousand have been condemned.

DAVID D. PORTER.

Hon. GIDEON WELLES,
Secretary of the Navy, Washington, D. C.

The district attorney and the counsel for captors, at the hearing of said cause, objected to the admission of the foregoing letter and reports of Rear-Admiral Porter as evidence in said cause.

The following depositions, taken in behalf of the claimants, were filed in the office of the clerk of said court, to be read in evidence in the Supreme Court upon the hearing of the appeal in said cause:

SPRINGFIELD, ILL., *Aug. 30th*, 1865.

Messrs. Hay & Cullom; Messrs Stewart, Edwards & Brown, and Hainey; Messrs. S. Logan & Springer:

406 You are hereby notified that we will take the deposition of And. W. McKee and others on the 10th day of Sept., A. D. 1865, in the city of New Orleans and State of Louisiana, before Hugh Madden, notary public, and which said depositions are to be read in evidence on the part of Withenbury & Doyle, in the consolidated cotton case now pending in district court for the southern district of Illinois, when, where, &c.

CORWINE & HERNDON,
for W. & Doyle.

erved on us this 29th August, 1865.

STUART, EDWARDS & BROWN.
HAY & COLLUM.
LAWRENCE WELDON, *Dis. Att'y,*
P'r W. H. HERNDON.
WM. M. SPRINGER,
Att'y for G. A. Le More & Co.

The depositions of George C. Kowns, Andrew W. McKee, William Bailey, Leon Querouze, Richard H. Hall, Richard Nugent, and J. Pinckney Harris, of the city of New Orleans, parish of Orleans, State of Louisiana, witnesses of lawful age, produced, sworn, and
407 examined upon their corporal oaths, commencing on the eleventh day of September, 1865, and ending on the twentieth day of September, 1865, at the office of Hugh Madden, notary public, in the city of New Orleans, parish of Orleans, State of Louisiana aforesaid, by me, said Hugh Madden, a notary public, in pursuance of notice to that effect, service accepted, (the said notice requiring said depositions to be commenced before me on the tenth day of September instant, which day was Sunday,) and hereto annexed, and to be so taken by me in a certain suit and matter in controversy now pending and undetermined in the United States district court for the southern district of the State of Illinois, and to be used and read in

evidence on the part of Withenbury & Doyle, in the consolidated cotton cases in said court, when, where, &c., the said witnesses being first duly sworn by me, said Hugh Madden, as witnesses in said cause, previous to the commencement of their examinations, to testify the truth, as well on the part of the plaintiffs as the defendants, in relation to the matters in controversy between the said plaintiffs and defendants, so far as they should be questioned, testified and

408 deposed as follows, to wit.

HUGH MADDEN, *Notary Public.*

Questions propounded by W. W. Withenbury to the said George L. Kowns, a witness produced and sworn as aforesaid on the part of said Withenbury & Doyle, propounded by said Withenbury, and his answers thereto, as follows:

Question. What is your name, age, occupation, and residence?

Answer. My name is George L. Kouns; my age is forty-one years; residence, New Orleans, Louisiana; occupation, commission merchant and cotton factor.

Question. Were you in the vicinity of Monroe, Louisiana, on the Washita river, in the months of February and March, eighteen hundred and sixty-four? If yea, state, if you know anything of the value of cotton then and there. State its value then and there in United States treasury notes and in Confederate States treasury notes. State the particulars of all sales of cotton you knew in the

409 months of February and March, 1864, and the highest price you have known to have been paid.

Answer. I was; I knew the value of some cotton sold then and there. Its value at that time and place was, in confederate money, twenty-five cents per pound, or about one hundred and twelve dollars per bale; and the difference between Confederate States treasury notes and United States notes (treasury notes) at time was ten to one in favor of United States treasury notes. I never saw any transactions for United States treasury notes.

Question. Do you know the plantation of Dr. J. T. Simmons? If yea, state whether cotton on that plantation was worth more or less than cotton where you have testified you know sales to have taken place.

Answer. In the month of March, eighteen hundred and sixty-four, it was worth the same, and I would not have made any difference in purchasing.

Question. Was it not generally known that the Simmons

410 cotton had been sold to the Confederate States government?

Answer. I have been told by Dr. Ballard that said cotton was sold to the Confederate States government, and that said Simmons had offered him confederate money, and that he, said Ballard, had refused to take it. This occurred at the hotel parlor of the hotel at Monroe, in March, eighteen hundred and sixty-four; and said Ballard claimed that the cotton belonged to him by mortgage, and that Simmons had no right to sell same to the confederacy. There were twelve or fifteen persons in the parlor when this conversation occurred between said Dr. Ballard and others.

Question. Do you know Leon Querouze and Jules Le More? If yea, state whether you frequently saw them in company at or near Monroe, Louisiana, in the month of March, eighteen hundred and sixty-four? If yea, what kind of business were they doing together? State all you know of them.

411 Answer. I had no personal acquaintance with them; I knew that there were two Frenchmen, as they were called, buying cotton in and about Monroe. They were buying cotton in March, eighteen hundred and sixty-four, and shipping it in July, eighteen hundred and sixty-four.

Question. Did you or not know John A. Buckner at Monroe, La., at the time alluded to above? If yea, what was his business there? Did you see him in company with Querouze and Le More? and if so, when? and state all you know of their transactions together.

Answer. Yes, I knew Buckner; he arrived at Monroe, Louisiana, in February, 1864; I arrived there 1st February, 1864; he, said Buckner, was there off and on during the months of February, March, April, May, June, and July; his business was that of an agent from the cotton bureau of Shreveport, to sell and smuggle cotton into the federal lines; I knew him to ship cotton by the steamer Rob Roy and her barge which belonged to the federal side and was up there under a flag of truce; her captain was S. P. Griffin, in July, 1864; I

412 was then introduced to him; I made efforts to buy, from the cotton bureau at Shreveport, cotton on the Washita, in March, 1864, and was offered by the chief of said cotton bureau cotton at twenty cents per pound in sterling for approved exchanged for this they would give privileges for free exportation beyond the confederate lines, with permits for the federal boats to come in under flag of truce and carry it out. Another offer was made me of importing goods from New Orleans into the confederacy, allowing me a profit of forty per cent. on New Orleans prices and pay me in cotton at twenty-five cents per pounds with permission for a federal boat to come in, discharge, load up, and go out again from any point on the Washita. Cotton purchased with all these privileges and permits was worth twenty cents per pound in specie, and without these, or previous to these permits being granted, was worth about ten cents per pound in confederate money.

413 Question. Was or was not the trading for cotton for U. S. treasury notes forbidden by the Confederate States and declared to be contraband? and what would have been the consequence had such trading been detected by the Confederate States authorities?

Answer. It was. The consequences, if parties were detected in so doing, would have been confiscation.

Question. Did you buy and sell any cotton during February and March, 1864? If yea, at what price did you buy and sell? To whom did you sell?

Answer. I did buy cotton and sell the same in the month of March, 1864; I sold to merchants in Monroe at the rate of twenty-five cents per pound in confederate money; I did know of another lot sold to a merchant in Monroe at thirty cents per pound in February, 1864.

also in confederate money. These cottons were considered good cotton, and, on the ordinary condition of cotton in the country, as far as I knew, these were the customary rates at that time.

G. S. KOUNS.

414 And now, it being too late on this day to proceed further with the taking of said deposition, I, the said Hugh Madden, notary public, as aforesaid, at the request of said W. W. Withenbury and said witness, adjourned the further taking of these depositions until to-morrow, Tuesday, the *the* twelfth day of September, 1865, at the same time and place.

HUGH MADDEN, *Not. Pub.*

And again, on this twelfth day of September, eighteen hundred and sixty-five, I, the said Hugh Madden, in pursuance of the adjournment from yesterday, the eleventh September inst., proceeding with the further taking of said deposition, when the said Withenbury produced to me, William Bailey, a witness in said case, and who was by me, notary, duly and solemnly sworn to testify the truth, the whole truth, and nothing but the truth; he testified and deposed as follows, to wit:

HUGH MADDEN, *Not. Pub.*

William Bailey, a witness, being produced on the part of Withenbury and Doyle and examined by W. W. Withenbury, deposed and testified as follows, to wit:

415 1st question. What is your name, age, occupation, and residence?

Answer. My name is William Bailey; age, sixty-four years; residence, New Orleans; occupation, planter.

2d question. Where did you reside in 1861, 1862, 1863, and 1864?

Answer. In the parish of Rapides, on my plantation near Alexandria, Red river, and to 10th May, 1864, when I left with Gen'l Banks's army, when I came to New Orleans.

3d question. State if you were engaged in buying and selling cotton generally, through the various parishes of this State west of the Miss. river, during that part of 1864 in which you resided in Rapides, as before stated. If so, state as near as you can the value of cotton up to time you left.

Answer. I was so engaged; I purchased myself cotton that year, and had four or five agents that bought for me in the various parishes; the value of cotton about the months of February and March, up to the time of arrival of Gen'l Banks's army at Alexandria, was sixty or sev-

416 enty dollars per bale for confederate money. After the arrival of Gen'l Banks's army in Alexandria, in March, 1864, and during their occupancy of the country, I bought several crops from fifty to sixty-five dollars per bale, payable in U. S. treasury notes; there was no U. S. treasury notes in the country that I could see until after the arrival of the army there. During the stay of the army there the price of cotton advanced with the privilege of shipping on U. S.

transports, which privilege was accorded by Gen'l Banks to all loyal citizens. With this privilege, I bought within the federal lines the crop of William Beatty's plantation, about three miles from Alexandria, consisting of about two hundred bales, baled up, and about four hundred bales in the seed, for which I was to pay for the ginning and to furnish the bagging and rope, which would then cost about twenty dollars per bale. This crop I purchased at sixty-five per bale, all round, and paid for it in U. S. treasury notes, outside of the federal lines; in the same region of country, at that time, cotton was worth and could be bought at about one-half that price.

417 Question. Are you acquainted with the locality of Monroe, on the Washita river? If so, what was the value of cotton in that vicinity at the time—say six months of February and March, 1864?

Answer. Yes; I lived near there twenty years; I have known of sales being made there at that time and place for forty dollars in U. S. treasury notes; I was offered the crop of John M. Imboden for that price, and he came to Alexandria specially to sell it to me. Cotton was not worth as much at Monroe as at Alexandria in said months of Feb'y and March, 1864; none of my agents at any time exceeded the prices I have stated; I purchased altogether about seven thousand bales.

Question. Do you know W. W. Withenbury and R. W. Doyle? If yea, how long have you known them, and what was their business?

Answer. I have know Withenbury for twelve years and Doyle about seven years; they were steamboaters on Red river.

Question. State what you know of their steamboats being
418 pressed into service of the Confederate States authorities during the late rebellion, and your means of knowing.

Answer. Captain Withenbury owned the steamer Homer. Doyle owned the steamer Vigo; each of these boats, as well as all boats on Red river, were impressed into said service; they, said confederate authorities, sent out to my plantation and impressed a good many of my own negro men, and a good many belonging to my daughter, Mrs. Pickett, and placed them in those two boats to load and unload them at Alexandria, and to make trips as boat hands to Camden, Vicksburg, or wherever deemed necessary.

Question. What do you know of the sentiments of said Withenbury and Doyle, as expressed in your presence at all times during the rebellion? and do you know anything of either rendering any services to the United States forces, when in the Red river country?

Answer. I saw them frequently, and had many interviews with them during the war, and know their sentiments well. I would
419 as soon doubt the loyalty of President Lincoln, as that of either of those two men; there were but few persons in the parish of Rapides but were rebels. My opportunities of knowing said W. and D. were good; each of them spent a considerable portion of their time at my plantation during the war. Doyle left plantation in 1864, when he left for New Orleans to report to Gen'l Banks, and afterwards returned with Gen'l Banks to Alexandria. Withenbury did go on board the gunboats and transports as pilot for Gen'l Banks and

Com. Porter. The whole army and navy had perfect confidence in him.

WM. BAILEY.

And now, at the request of said parties and witness, I adjourned the further taking of these depositions until to-morrow, the 13th day of Sept., inst.

HUGH MADDEN, *Not. Pub.*

And again, on this 13th day of September, 1865, the said Withenbury again produced the said George S. Kouns, whose testimony I, in pursuance of the adjournment yesterday, proceeded to take, as follows, to wit:

420 Question. In your answer to the fifth question, you state that you were offered by the chief of the cotton bureau at Shreveport, cotton at twenty cents per pound in sterling exchange, with certain privileges and permits, which you have enumerated; you will now state whether you purchased any cotton on those terms, or whether you know of any one else purchasing on those terms.

Answer. I did not; nor did I know of any one else who did purchase on those terms.

G. S. KOUNS.

And now, at request of said party, Withenbury and witness, I again adjourned the further taking of these depositions until to-morrow, the 14th Sept., instant.

HUGH MADDEN, *Not. Pub.*

And again, on this 14th September, 1865, the said Withenbury produced Andrew W. McKee as a witness in said case, and who, after being by me duly and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the questions to be propounded to him, testified and deposed as follows, to wit.

421 HUGH MADDEN, *Not. Pub.*

Question. Have you been examined before in this case? If yea, state when.

Ans. Yes; once in Springfield, Illinois, and several times during the last four weeks, in this city.

Question. Were you, at any time during your official connexion with the treasury department of the so-called Confederate States, under the control, or subject to, the orders of the military authorities of the trans-Mississippi department?

Ans. I never was; I was requested by the secretary of the treasury to consult with said military authorities as to the safety, preservation, or destruction of the government cotton. I had serious difficulty and trouble with Gen'l E. K. Smith on this question of jurisdiction. I was arraigned before a military tribunal by Gen'l E. K. Smith; my wife applied for a writ of habeas corpus in my behalf, which was answered, and the question of jurisdiction brought up before D. Warren Moise, judge of the district court of Louisiana, for the so-

422 called Confederate States, who fully decided the question of jurisdiction, as set forth in the printed paper which I hereunto annex as Exhibit A, which printed paper I know to be a true and correct copy of the original opinion of said judge, there being no superior court in the so-called Confederate States. The decision of said judge Moise was final, and I was released from said military jurisdiction. In said printed copy is embraced a printed copy from C. G. Memminger to E. K. Smith, which shows to what extent I was to consult or act with the military authorities. See page 13, printed copy; also, see recapitulation of the said judge, pages 23 and 24.

A. W. McKEE.

And again, at the request of said W. W. Withenbury and said witness, I adjourned the further taking of said depositions until to-morrow, the 15th Sept., inst., at same time and place.

HUGH MADDEN, *Not. Pub.*

And now again, on this 15th Sept., 1865, said W. W. Withenbury produced Leon Querouze as a witness in said cause, and who
423 was subpœnaed by me, and who, after being by me duly and solemnly to testify the truth, in answer to the questions to be put to him, testified and deposed as follows, to wit.

HUGH MADDEN, *Not. Pub.*

Question. What is name, age, residence, and occupation?

Answer. My name is Leon Querouze; age, forty-seven years; residence, New Orleans; nothing, at present.

Question. Were you, or not, at Shreveport in the month of February, 1864? If yea, please state if you had any transactions with the officers of the Confederate States government and the so-called cotton bureau, and what those transactions were.

Answer. I was; I had. I had an order for eight hundred and thirty bales. They owed me that number of bales of cotton. They owed me this cotton in lieu of four hundred and fifteen bales of cotton which they had impressed from me at Brownsville, Texas, the exchange being two for one, which was the usual rate at that
424 time for cotton in Louisiana.

Question. State whether, at any time during the late rebellion, you owned any other cotton than the eight hundred and thirty bales before testified about, within the lines of the so-called confederacy. If yea, state how you acquired said cotton, and what became of it.

Answer. None but the four hundred and fifteen bales I had at Brownsville, as before stated. I bought this last-mentioned cotton from different parties; I bought some of that lot of cotton in the neighborhood of San Antonio; some at Brownsville, Texas. The Confederate States impressed from me at Brownsville, as before stated; the cotton was impressed from me in 1863, in August or September, as near as I can now say.

Question. Were you at that time acting on your own behalf, or as agent for other parties? If as agent, state for whom.

425 Answer. I was acting for my own self.

Question. Did you ever acquire any cotton from the confederate cotton bureau, or the confederate government?

Answer. None but those eight hundred and thirty bales I testified about.

Question. Do you know Mr. Jules Le More? If yea, state whether he was at Shreveport with you in February or March, 1864, and state whether he knew your business there, or whether you had business with him.

Answer. I did. I saw him in Shreveport in February and March, 1864; he did not know my business there, or that I had some C. S. cotton. In March of that year I sold him some cotton. I am not certain whether I spoke to him of this cotton in Shreveport or in Monroe, Louisiana; he did not know of anything about my transactions from me.

Question. Did you or not go from Shreveport to Monroe, in February or March, 1864? and did not Mr. Jules Le More go with you?

426 Answer. I did. I made two or three trips; Mr. Le More did accompany me once or twice. I cannot remember how many trips.

Question. What particular business caused you to make these particular trips with Mr. Le More?

Answer. I do not know what caused Mr. La More's trip. I think he was trying to buy cotton there; my particular business was to take an order to Major Buckner for eight hundred and thirty bales of cotton; this was in February, 1864; I made this trip alone.

Question. What particular lot of cotton did you acquire from the confederate goverment while at Shreveport? What kind of title or bill of sale did you get? From whom did you get it? And can you furnish the original or a copy? And at what date did you so acquire said cotton?

Answer. I did not acquire any cotton at Shreveport. I did get from Broadwell, chief of cotton bureau at Shreveport, an order
427 on Major Buckner, at Monroe, for the eight hundred and thirty bales before spoken of; Mr. Buckner offered me one or two lots of cotton, and I took this one, which was eight hundred and thirty bales, on Simmons's plantation. I got no bill of sale or evidence of title of said cotton; Mr. Buckner went with me and delivered it to me himself. I think that this was in the month of February, 1864.

Question. State what you did with said cotton? When you disposed of it? To whom? and what kind of title did you make the purchaser?

Answer. I sold said cotton to Mr. Jules Le More, agent of G. A. Le More & Co., Havre, France, I think about the latter part of February or first days of March, perhaps the 1st March, 1864. I gave an invoice of said cotton in the name P. Garcia, signed by me as agent.

Question. Did you or not weigh and sample the cotton when you purchased it?

428 Answer. No. I saw some of the cotton; there was a few bales weighed and an average taken, which I cannot remember now.

Question. When you sold the cotton and delivered it to Le More, was he present at the cotton shed? Did he pay you for it before it was weighed and sampled.

Answer. I do not know whether Le More saw the cotton or not before he paid me for it, at so much per bale. He paid me for it. I do not know whether it was before or after it was weighed and sampled; he paid me for it that same month of March, I think. I do not remember whether it was in Shreveport or in Monroe that he paid me, but it was one of the two.

Question. Why did you make a bill of sale in the name of P. Garcia, as his agent, when you were sole owner of the property yourself?

Answer. I told Le More that the cotton belonged to one P. Garcia, a Mexican, and that I was his agent, in the hope of more completely satisfying Mr. Le More, who would not have bought it had he
429 known that it was bought from the Confederate States. Said Garcia never had any ownership in the cotton.

Question. Did you or not tell Le More from whom you had acquired this cotton, and did he not see the marks upon it before he paid for it? Was it not all or nearly all marked C. S. A. in addition to the planters mark? Were not you and Le More and Major Buckner frequently together before and after and at the time of this transaction?

Answer. I told Le More I bought this cotton from different planters; he saw the marks, but whether before or after he paid for it I do not know; the bales in sight as it lay in the sheds were nearly all marked C. S. A. I do not remember that J. Le More and Buckner were together at the plantation at the same time, but I think not. I and Le More were on the plantation together. I delivered him the cotton there. Mr. Le More saw the cotton there. I do not remember whether he paid me for the cotton before or after delivery.

430 Question. If as you say you deceived Le More, by telling him you bought the cotton from different planters, and that he would not have bought it had he known that you acquired it from the confederate government, are you not accountable to him or G. A. Le More & Co. for any loss he or they may sustain in consequence of the confederate government having once owned the cotton, and that you deceived him in this manner?

Answer. It was to my knowledge that no one but Broadwell, chief of the cotton bureau, had any right to sell that cotton at that time. As my title was complete, I did not suppose it made any difference to Mr. Le More the balance I will not answer.

Question. Who was present when Le More paid you? Did the bill of sale you gave him describe the weight and quality of the cotton?

Answer. I do not remember who, if any one, was present. I believe it did, but cannot say if it did describe the weight and quality.

Question. Have you any evidence of the impressment of

431 your four hundred and fifteen bales of cotton by the confederate authorities at Brownsville?

Answer. I have not.

Question. Have you any evidence of the eight hundred and thirty bales of cotton given to you by the confederate authorities in lieu of said four hundred and fifteen bales of cotton?

Answer. No.

Question, Was there any person present when Broadwell in person gave you the order?

Answer. None that I know of.

Question. Was not your claim against the confederate government the subject of an arbitration at Shreveport? If so, who were the arbitrators, and when was it arbitrated on? State all the facts in connexion with it?

Answer. It was never arbitrated on; I never had any case arbitrated on with the confederate government; the matter of my claim was never referred to any one but Broadwell, chief of cotton bureau.

432 Question. Did or did you not get a permit from the confederate authorities to export cotton from the Washita river for account of G. A. Le More & Co.? If yea, who gave the permit? Who signed it? and did it refer to any particular lot of cotton? Describe the permit, its date, and so forth.

Answer. I did get the permits for that amount of cotton. I do not know whether I got the permit in their name or my own; but it was for them. I think it was signed by Kirby Smith or Broadwell, or both. I do not now remember; cannot describe the permit. I did not get the permit until after I sold the cotton to Le More. The permit referred to my cotton. I do not remember the date. Le More paid the export duties on said cotton to the confederate government, at Shreveport. This was after he purchased the cotton from me. I myself handed the permit to Le More, I think in Shreveport, but I do not remember. This was before or after he paid me for the cotton.

Question. Did you, while at Brownsville or Matamoras, have any dealings with the Confederate States government? Have you or not, by contract or otherwise, ever furnished the Confederate States
433 government with cloth or other supplies, on your account, or as agent for the parties?

I decline answering the question.

Question. Have you or not, at some time during the late rebellion, acted as the agent of G. A. Le More & Co., or of Jules Le More, or some other parties connected with them in business, between them and the confederate government?

Answer. No.

Question. Did you or not obtain some portion or all of the four hundred and fifteen bales of cotton you have testified about in payment for supplies or services to the confederate government, either on your own account or that of other parties?

Answer. No.

Question. Did you carry the order for the 830 bales from Broadwell to Buckner? and did Jules Le More go with you from Shreveport to Monroe, at that time?

434 Answer. I carried alone. Le More was not with me.

LEON QUEROUZE.

And now again, at request of said Withenbury, I further adjourned the taking of said depositions until to-morrow, the 16th day of Sept'r, inst.

HUGH MADDEN, *Not. Pub.*

On this 16th Sept., 1865, in pursuance of the adjournment from yesterday, said Withenbury produced Richard H. Hall, a witness in said cause, who being by me duly sworn to testify the truth in answer to the questions to be put to him in above case, testifies and deposes as follows, to wit.

HUGH MADDEN, *Not. Pub.*

Richard H. Hall, being duly sworn to testify the truth, the whole truth, and nothing but the truth in answer to the questions to be propounded to him in said above-entitled suit, was by said W. W. Withenbury duly questioned, and deposed as follows, to wit:

Question. What is your name, age, residence, and occupation?

435 Answer. My name is Richard H. Hall; my age, I am forty-four years; residence, New Orleans; occupation, accountant.

Question. State what you know of the value of cotton in the Washita river, near Monroe, La., in the spring of 1864, and your means of knowing said value.

Answer. I do know that the house of C. A. Weed & Co., of New Orleans, of which house I am cashier, did buy, in spring of 1864, forty bales of cotton from Dr. John Colderwood, of Monroe, at the price of fifty dollars per bale, in cash in U. S. treasury notes. This cotton was in Colderwood's place, on the Washita river, near Monroe. My means of knowing is because I was cashier for C. A. Weed & Co., and seen the money paid.

RICH'D H'Y HALL.

And again, at the request of said W. W. Withenbury and said witness, I adjourned the further taking of said testimony and depositions until Sunday, 18th day of September, instant.

HUGH MADDEN, *Not. Pub.*

436 And again, on this day, appeared before me Richard Nugent, a witness produced by said W. W. Withenbury, and who excused himself from giving his testimony on this day, owing to want of time, and being somewhat ill, and requested an adjournment until to-morrow, the 19th day of September, inst., to which I accordingly adjourned.

HUGH MADDEN, *Not. Pub.*

On this 19th September, the said Richard Nugent, in pursuance of the adjournment from yesterday, presented himself as a witness in said case, and being by me duly and solemnly sworn to testify the whole truth in answer to questions put to him as a witness, was questioned by said Withenbury, and testified and deposed as follows, to wit.

HUGH MADDEN, *Not. Pub.*

Hugh Nugent, a witness produced by said W. W. Withenbury, and who being by me, said notary, first duly and solemnly sworn to testify the truth, the whole truth, and nothing but the truth in answer to the questions to be propounded to him as a witness in said
437 case, testified and deposed as follows, to wit:

Question. What is your name, age, residence, and occupation?

Answer. My name is Richard Nugent; my age, fifty-four years; residence, New Orleans; occupation, commission merchant.

Question. Were you or not at Shreveport, La., in February and March, 1864? If so, state whether you had any transactions with the so-called cotton bureau, of which Lieut. Col. W. A. Broadwell was the chief.

Ans. Was at Shreveport about the period named. I had transactions with the cotton bureau. Was tendered the position of agent at Alexandria, then held by Major McKee, but declined the offer.

Qustion. While at Shreveport did you or not know Jules McKee and Leon Querouze to have business with said bureau? If yea, state what that business was, how it was settled, and how it originated.

Answer. I know nothing about the origin of the business of
438 Le More & Co.

Question. Were you or not one of the arbitrators between Le More & Co., or Leon Querouze, and the C. S. government, whereby a certain claim of Le More & Co., or Leon Querouze, against the C. S government was settled? State all you know of such arbitration and settlement.

Answer. Was called upon with others to arbitrate a claim of the parties named, and between them and the C. S. government, which was decided against them, said Le More and Querouze.

Question. For whom did Jules Le More, or Queronze, claim to be acting as agents? or were they acting for themselves? and for what did they have a claim against the C. S. government? State all the facts.

Answer. Do not know for whom the parties named acted; my recollection is that Mr. Querouze was only acting as agent for Le More & Co., and a transfer of some cotton was made to one or other for the claim, but how many bales, or where located, I do not
439 know.

RICHARD NUGENT.

And here again, at the request of said W. W. Withenbury, I further adjourned the taking of said dopositions until to-morrow, the twentieth day of September, instant.

HUGH MADDEN, *Not. Pub.*

And on this 20th September, inst., said Withenbury again produced I. Pinckney Harris, a witness in said suit, and who, after being by me duly sworn to testify the truth in answer to questions to be propounded to him, and being examined by said Withenbury, testified and deposed as follows, to wit.

HUGH MADDEN, *Not. Pub.*

Question. State your name. residence, age, and occupation.

. J. Pinckney Harris; Shreveport, La.; twenty-seven years; attorney at law.

Question. Please state whether you were at Shreveport, La., in the month of February and March, 1864, and if you have re-
440 sided there up to the present time.

. I was, and have resided there up to the present time.

Question. Were you or not acquainted with the business transactions between the firm of G. A. Le More & Co., of Havre, France, and the C. S. government, at and about the time alluded to you in your answer to int. 2? If yea, state all the facts and circumstances connected with that business; name all their agents and sub-agents; refer to all documents of which you have had any knowledge pertaining to said business. State when, how, and where you had access to such papers, and what you did in the matter.

Answer. I know that in the early part of 1864 G. A. Le More & Co., of Havre, France, through their agent or representative, Leon Querouze, asked of the confederate authorities at Shreveport payment for about eighty thousand dollars worth uniform gray cloth, furnished by them to the confederate government. I know that
441 the cotton bureau, organized by Gen'l E. Kirby Smith, at Shreveport, and under the control of Col. W. A. Broadwell, had the above-mentioned claim under consideration, and after considerable delay gave Mr. Querouze, the agent of G. A. Le More & Co., an order on Major Buckner to turn over to him about eight hundred or a thousand bales of cotton on the Ouachita, in settlement of the claim of G. A. Le More & Co. for the above-mentioned gray cloth, Mr. Queyrouze, the agent of G. A. Le More & Co., accepted the above-mentioned amount of cotton under protest, claiming some three hundred bales in addition, on account of the difference of value of cotton on the Ouachita and on the Rio Grande, at which latter place the confederate authorities had at first agreed to pay for the said gray cloth in cotton, at a certain rate per pound. I know that Mr. Queyrouze or Mr. Le More, after the above-mentioned order on Major Buckner had been obtained, repaired to the Ouachita river, and there had certain cotton designated to fill said order, that he then proceeded to the h'dq'rs of Gen. Richard Taylor to obtain a permit to export the said cotton. I know that he subsequently complained that he
442 was delayed in getting an interview with General Taylor, and that when the permit was obtained, and he went back to the Ouachita to ship the said cotton, he found that it had been moved by the federal navy. I, in person, representing G. A. Le More & Co., having been employed by their sub-agent, Major La Salle, to press

their claim before the confederate authorities, made demand on Broadwell's cotton bureau for the coin which had been paid by G. A. Le More & Co., or their agent, Queyrouze, to said bureau for export duty on said cotton. I am asked how, when, and where I had access to the documents referring to the transactions between G. A. Le More & Co. and the C. S. government. I was employed by Major La Salle, the sub-agent of G. A. Le More & Co., as an attorney at law, to attend to their interest in getting pay for the gray cloth furnished to the confederate government; the documents which came under my observation were, first, the certified accounts of G. A. Le More & Co. against C. S. government for gray cloth, amounting to about $80,000; also an additional account for a small sum for expenses incurred by
443 Leon Queyrouze, as agent for G. A. Le More & Co., in collecting the money due on the above account; also certain letters between confederate quartermasters, cotton agents, and others, and Leon Queyrouze, agent for G. A. Le More & Co.; also certain papers in an arbitration between the cotton bureau of Col. Broadwell and G. A. Le More & Co., in regard to the quantity of cotton due the latter in the said ac. for the said gray cloth; also letters between G. A. Le More & Co. and Leon Queyrouze, reporting labors and progress of the latter in getting payment, and instructions from the former in regard to manner of proceeding. The papers were first showed to me by Major La Salle, and afterwards I copied them seriatim in the office of the cotton bureau. This was after the arbitration alluded to above, and I was not permitted to take the papers from the office of the cotton bureau. These papers were copied that they might be used at Richmond by Major La Salle, who had gone to Richmond as the sub-agent of G. A. Le More & Co., to obtain from the C. S. government other cotton in place of that taken from them in the Ouachita by the federal government, and enough in ad-
444 dition to compensate them for their goods and the expense of obtaining payment.

Question. What became of the documents and paper referred to in your answer to the 3d interrogatory? State fully all you know of them, and of the subject-matter embraced in the foregoing interrogatories.

Answer. I know nothing of them in particular; most of the public documents in Shreveport were destroyed about the time of the surrender of the trans-Miss. department. For the other part of the question I believe that I have answered that in the answer to the 8th interrogatory.

J. PINCKNEY HARRIS.

I, Hugh Madden, of the city of New Orleans, parish of Orleans, State of Louisiana, a notary public appointed to take the depositions of the foregoing witnesses, whose names are subscribed to the foregoing depositions, respectively, do certify that previous to their examination of them, said witnesses, in the said suit of U. S., libel-
445 lants, *vs.* sundry bales of cotton, Withenbury and Doyle, claimants, they were duly sworn by me, as such notary public,

to testify the truth relative to the matters in controversy between the said libellants and defendants and claimants, so far as they should be interrogated concerning the same; that said depositions were taken in my office in the city of New Orleans, parish of Orleans, State of Louisiana, on the days respectively therein stated; and that, after said depositions were taken by me as aforesaid, the questions and answers thereto, as written down, were read over to the said witnesses respectively, and that thereupon the same were respectively signed and sworn to by said deponent before me, the oath being administered by me, said notary public, at the place and on the days and year therein named; that all of said depositions were written down by me, except those of J. Pinckney Harris, who wrote the same himself in my presence, and in answer to questions propounded by the said W. W. Withenbury.

And I further certify that the several alterations, interlineations, and erasures were made by me at the time they occurred, and before the several deponents respectively the same.

446 [SEAL.] HUGH MADDEN, *Notary Public.*

Filed Oct. 4, 1865.

GEO. P. BOWEN, *Clerk.*

Exhibit A, referred to in deposition of A. W. McKee.

THE CONFEDERATE STATES, *ex al.*, H. B. McKee, *vs.* CAPT. DANIEL SCULLY, GEN. E. KIRBY SMITH, Maj. Gen'l John G. Walker, Maj. Gen'l S. B. Buckner.	On habeas corpus for the body of Andrew W. McKee.

This case is of great public interest and of great public importance. Some circumstances connected with it are probably without precedent, even in the recent history of the United States, and certainly so in the yet brief life of this confederacy. Portions of it will attract the attention of both the legislative and executive departments of the government. The magnitude of the principles involved in it and the striking peculiarity of some of the facts have
447 induced me to put on record a full and detailed account of the case from the beginning, although this is not necessary for the decision of the questions immediately presented for solution.

On the 1st of July, 1864, Mrs. Hattie Bailey, wife of Andrew W. McKee, applied to me in behalf of her husband for the writ of habeas corpus. Her petition alleged that on or about the 12th of May preceding, McKee was arrested in Houston, in the State of Texas, by order of the military authorities of the Confederate States; that under said order McKee was imprisoned until on or about the 2d of June, when he was removed under military guard to Shreveport, Louisiana, where he arrived on the 23d of said month; that on his arrival in Shreveport he was placed in close confinement, and all access to and communication with him was denied to the relator, as well as to the counsel of McKee; that after a confinement of some hours

in Shreveport, McKee was removed secretly and under cover of night from his prison, and conveyed under a military guard
448 to the town of Alexandria, in this State, where he was detained by Captain Daniel Scully, commanding the post of Alexandria, under orders from Major General John G. Walker, both officers of the army of the Confederate States.

The petitioner further alleged that all access to her husband was denied to his counsel, and to all other persons but herself, and that McKee, being thus deprived of the opportunity of making application in his own proper name and person for the writ of habeas corpus, prayed to be allowed to apply for the writ in his behalf.

The petitioner further states that said Andrew W. McKee was not an officer or soldier in the army of the Confederate States; that he was in no manner liable to military laws or amenable to military tribunals; wherefore petitioner prayed for the writ of habeas corpus, &c.

In accordance with the prayer of petitioner, an order was made for the writ to issue, returnable before me, at Natchitoches, on the 13th of July, following.

The writ was served upon Captain Gourdain, in whose immediate custody McKee was, and who commanded the post of Alexan-
449 dria at the time of the service. Captain Gourdain, for return to the writ, (called by him a peremptory exception to the petitioner,) assigned three causes for the detention of McKee, namely:

1st. He detained McKee by order of Major General John G. Walker, commanding the district of western Louisiana.

2d. That McKee was arrested by order of General E. Kirby Smith, commanding the trans-Mississippi military department, for holding intercourse and correspondence with the enemy without necessity, and without the permission of the Confederate States, and for unlawful trading with the enemy.

3d. That by virtue of the provisions of the act of congress entitled "An act to suspend the privilege of the writ of habeas corpus in certain cases," approved the 15th February, 1864, and under the authority conferred upon him by the president of the Confederate States, the said General E. Kirby Smith, commanding
450 the trans-Mississippi military department as aforesaid, has suspended the privilege of the writ of habeas corpus with respect to the said A. W. McKee, as will more fully appear by the annexed copy of the order of suspension, annexed to and prayed to be made part of this exception.

The following is a copy of the order of suspension annexed to the return:

[Special orders No. 135.—Extract.]

HEADQUARTERS TRANS-MISS. DEP'T,
Shreveport, La., May 31st, 1864.

In accordance with the authority vested in me by the act of congress, the writ of habeas corpus is suspended in the case of A. W. McKee, on the grounds:

1st. Of his holding intercourse and correspondence with the enemy without necessity, and without the permission of the Confederate States.

2d. Of unlawful trading with the enemy.

(Signed) E. KIRBY SMITH.
General Commanding.

451 Upon the petition and the return the cause was heard. The counsel for McKee, in an elaborate argument, insisted that the act of congress suspending the privilege of the writ of habeas corpus was in violation of the constitution, and therefore void; but as I was unable to concur with them, I ordered, in conformity with and in the language of the act, that all further proceedings in the case shall cease and remain suspended so long as the act entitled "An act to suspend the privilege of the writ of habeas corpus in certain cases," approved Feb. 15, 1864, shall remain in force.

Had the return to the writ of habeas corpus justified the detention of McKee under the first or third cause specided in it, I should have been obliged to discharge him. The order of Maj. General Walker to a subordinate officer, instructing him to arrest and hold a citizen not in the military service, (for there was no pretence set up in the return that McKee was in any way connected with the army,) would have been regarded as without authority of law and as an illegal imprisonment from which McKee was entitled to liberation.

452 As to the special order of the general commanding, I must observe that it had its origin in a total misapprehension of the act of congress, as that act conferred upon him no right whatever to suspend the privilege of a writ of habeas corpus. McKee was arrested in Houston about the 12th of May, and the order suspending the writ was not issued until the 31st of May. As McKee was arrested, according to the sworn statement of Captain Gourdain, by order of General Smith, for two of the causes specified in the act suspending the privilege of the writ, it is not perceived why this order No. 135 was ever issued, even on the erroneous assumption that General Smith had authority to do so; for McKee could not be discharged from the arrest which had been made in accordance with the provisions of the statute suspending the privileges of the writ. I cannot forbear to remark that as subsequent events demonstrated that McKee was arrested as one subject to military law and to be tried by a military tribunal, there was no need whatever to resort to the extraordinary arrest under the act suspending the habeas corpus: for if McKee was a person subject to military law and answerable to a military tribunal, and the return and evidence had so shown, he would have been remanded to the custody of the

453 military authorities.

The question of the jurisdiction of a court-martial over him would have been decided in the preliminary inquiry. It certainly could not have been the intention of the act of congress suspending the writ of habeas corpus, to sanction the arrest and detention of persons not amenable to the rules and articles of war, for the purpose

of subjecting them to a trial by a court-martial for a military offence. Without intending to charge the general commanding this department with an intentional abuse of the power of arrest given to him under the act referred to, it appears to me that it has been perverted from its legitimate purpose; I do not say from design, but from a serious misconstruction of its true meaning.

The act of congress suspending the privilege of the writ of habeas corpus in certain cases expired by its own limitation on the 5th of August; on the 2d of August application was made to me for an alias writ of habeas corpus on the grounds that the act suspending the writ had expired; that McKee was still in custody and undergoing trial by a court-martial; reiterating the allegation that McKee
454 was not subject to military law, &c., and stating that a plea to the jurisdiction of the court-martial had been filed, but that the court had refused to consider it, saying that they would decide it when they decided the merits.

This application for an alias writ on the 2d August was premature; so I held it up until the 5th, the day on which the act had expired, when I directed the writ to issue, returnable before me, at Natchitoches, on Friday, the 12th of August.

On the 7th of August Major General Walker made a request of me to go to Alexandria to try the cause, as the day incident to its trial at Natchitoches would be of great detriment to the public service. I consented to go down, but was suddenly seized with severe sickness, which incapacitated me from travel. On the 19th of August, still unable to travel, and indeed scarcely able to stand, I received a pressing entreaty from the counsel of McKee to make the writ of habeas corpus returnable before me "instanter," at Natchitoches. They informed me that the case had been closed and they had good reason to fear the most serious consequences before the case could
455 be heard by me, if there was any further postponement. To this reasonable application I promptly acceded, and directed the writ to be returnable before me at this place forthwith; the counsel for the petitioner and for respondent reached here on the 23d, and as they were desirous of preparing written arguments, the case was not heard until the 31st, when it was orally argued and submitted. The further history of the case may be gathered from the decree pronounced and the reasons assigned for announcing it in advance of the opinion. The following is a copy:

"This case was argued and submitted on the 31st day of August, 1864. On the 2d of September, I was officially informed by Major General Buckner, through Lieut. Fuselier, who represented Major General Buckner, (the respondent to a writ of habeas corpus,) at the hearing of the cause, that Major General Buckner had received orders from department headquarters directing that there should be no longer any delay in the execution of the prisoner, and that accordingly McKee would be shot on that day, the 2d inst., at six o'clock.

[NOTE.—It is due to Major General Buckner to put on record
456 the following extract from a letter received from him, dated September 6th, 1864:

"I have received a copy of the decree of your court, in reference to Andrew W. McKee.

"Permit me to correct a slight error in the preamble of the decree, in which you state incorrectly that I informed you that McKee would be executed at a particular time; the statement is erroneous in representing that I announced a purpose of my own, when in fact a reference to my letter will show that I designed simply to make known the instructions of another party in connexion with the fact that a certain time had been fixed for the execution."]

From this letter it appears that the time fixed for the execution of the decree was by instructions from department headquarters, where the proceedings of the court-martial had never been seen, as I was informed by the counsel of both sides, in reply to an inquiry from me on the subject.

When this communication was made to me, I had not concluded my examination of the record, the written arguments of counsel, and the authorities. I continued to consider the case, and on
457 the next day, the 3d, was prepared to render a decree, and only abstained from doing so because I took it for granted that McKee had been shot on the 2d inst., as Major General Buckner informed me he would be. To-day I have learned from an official source, however, that McKee had not been shot on the 2d, nor up to a late hour on the 3d inst. Under these circumstances I have thought it proper to render a decree immediately, and in advance of the written opinion, which it will take me some days to prepare.

Decree.

Ordered, that Andrew W. McKee be discharged from the custody of the military authorities of the trans-Mississippi military department, and from the custody of Major General Buckner, commanding the district of western Louisiana; the court-martial under whose finding and sentence the said McKee is detained, having been wholly and entirely without jurisdiction to try the said McKee. It is further—

Ordered, that the said McKee be delivered into the custody of the marshal of the Confederate States for the district of Lou-
458 isiana, to be safely kept by him, the said marshal, so as to afford time for an affidavit to be made for the arrest of said McKee for any offence the said McKee may have committed against the laws of the Confederate States, or until further orders from the confederate court of this district or the judge thereof.

Natchitoches, Sept. 4, 1864.

Such is the history of this case. It now becomes my duty to assign the reasons on which the decree was rendered.

The return of the alias writ of habeas corpus was made by Major General S. B. Buckner, commanding the district of western Louisiana. The return stated that the said McKee was held in custody "by

virtue of a final order or judgment of a general court-martial, sentencing the said McKee to be shot to death by musketry, at such time and place as the commanding general may direct; and also by virtue of general order, No. 83, issued by Major General Walker, commander of the district of western Louisiana, dated 17th of August, 1864, approving the proceedings, finding, and sentence, and fixing the time and place thereof." The return further set forth that he
459 "detained the body of the said Andrew W. McKee under the said judgment and order, for the purpose of causing to be carried into execution, in the manner and form as stated, the sentence awarded against him therein."

The record of the proceedings of the court martial and the general order of Maj. General Walker, were annexed to and made part of the return. In conclusion, the return stated that in view of the fact that the respondent detains the body of the said McKee by virtue of the final judgment above referred to, and the difficulty of procuring a sufficient force of cavalry to escort him to the place of holding the court, without danger of his escaping, respondent has abstained from producing the body of the said McKee before the court.

When the return was read by the officer detailed to represent the respondent before me, I inquired of McKee's counsel if they had any objection to make to it; they replied they had not, affirming at the same time that General Buckner had given them his assurance that he would hold McKee subject to my orders, and that
460 McKee might be considered as much in the possession of the court as if he were actually in its presence and custody.

McKee was arraigned before the court on five charges.

1. Holding correspondence with the enemy. Under this charge there were thirty-six specifications.

2. Giving intelligence to the enemy. Under this there were eight specification.

3. Encouraging to desert. Under this, four specifications.

4. Relieving the enemy. Under this, four specifications.

5. Embezzling military stores belonging to the Confederate States. Under this, there were four specification.

These specifications charged McKee in four different capacities—

1. As "major and assistant quartermaster in the military
461 service of the Confederate States, acting and serving as such in the trans-Mississippi department, and under the control of the military authorities then governing said department of the Confederate States."

2. As "agent of the treasury department of the Confederate States for the purpose of purchasing cotton of the planters, which was to be used for the purchase and payment for supplies and military stores for the army and navy of the Confederate States, and under the control of the military authorities governing said department of the Confederate States in the field west of the Mississippi river."

3. As "a member and officer of the military bureau, known and designated as the cotton bureau of the trans-Mississippi department,

and under the control of the military authorities governing the trans-Mississippi department of the Confederate States, and serving as such with the armies of the Confederate States in the field in said department."

462 4. As "Andrew W. McKee, a retainer of the armies of the Confederate States, serving as such with the armies in the field west of the Mississippi river."

McKee filed a plea to the jurisdiction of the court-martial, denying specifically the several capacities in which he was charged, and averring that "he utterly denies that he is in anywise amenable to any military authority or tribunal whatever."

After hearing evidence on the merits, the court-martial overruled the plea to the jurisdiction, and found McKee "guilty" of the first, second, and fourth charges, and not guilty of the third and fifth. Of the several characters or capacities in which he was charged, the court-martial found that he was not a major and assistant quartermaster in the military service of the Confederate States; that, as agent of the treasury department for the purchase of cotton, &c., he was not under the control of the military authorities governing said department of the Confederate States, serving as such with the armies of the Confederate States in the field west of the Mississippi river, and that he was not a retainer of the armies of the

463 Confederate States, serving as such with the army of the Confederate States, in the field west of the Mississippi river.

Of the characters or capacities in which McKee was charged, the court martial found that—

1. He was acting and serving in the trans-Mississippi department, and under the control of the military authorities governing said department of the Confederate States.

2. He was agent of the treasury department of the Confederate States for the purpose of purchasing cotton of the planters, which was to be used in the purchase and payment for supplies and military stores for the army and navy of the Confederate States.

3. He was a member and officer of the military bureau, known and designated as the cotton bureau of the trans-Mississippi department, and under control of the military authorities governing the trans-Mississippi department of the Confederate States, and serving as such with the armies of the Confederate States in the field in said department.

4. The court-martial found that as, Andrew W. McKee, without any military capacity whatever, he was subject to the jurisdiction of the court.

464 This analysis of the charges and findings of the court-martial is made from the record, as I found some inaccuracies in the printed report annexed to the return of Major General Buckner.

The counsel for the prosecution raised a preliminary question as to the right of any court to look behind the decision of a court-martial, affirming its jurisdiction; and urged that in cases in which a court-martial took jurisdiction of a cause, no tribunal but the appellate (that is) the reviewing officer could look behind its decision. This

position was taken both in the oral and written argument. It is altogether wrong. The contrary rule is so well settled that nothing is left me but to cite authorities: "Courts of special and limited jurisdiction," says the Supreme Court of the United States, "are created on such principles that their judgments, taken alone, are entirely disregarded, and the proceeding must show their jurisdiction." Grignon's Lessee *vs.* Astor, *et al.*, 2 How., 319. "A court-martial," says Mr. Greenleaf, "is a court of limited and special jurisdiction;
it is called into existence by force of express statute law for
465 a special purpose, and to perform a particular duty, and when
the object of its creation is accomplished, it ceases to exist. The law presumes nothing in its favor. He who seeks to enforce its sentences, or to justify his conduct under them, must set forth affirmatively and clearly all the facts which are necessary to show that it was legally constituted, and that the subject was within its jurisdiction; and if in its proceedings or sentence it transcends the limit of its jurisdiction, the members of the court, and the officer who executes its sentences, are trespassers, and as such are amenable to the party injured in damages in the courts of common law.—3 Greenl., sect. 470. "That a court-martial is a court of special and limited jurisdiction must be evident on the slightest reflection. It is called into existence for special and temporary purposes; and when these purposes are answered, it is dissolved and disappears. That it is limited to particular offenders and offences is equally certain; all its powers are therefore special and limited."—Mills *vs.* Martin, 19 Johns,
33. "There is, however, a marked and decided distinction be-
466 tween superior courts or courts of general jurisdiction, and in-
ferior courts or courts of special and limited jurisdiction. In the former case, the intendment of the law is, that they had jurisdiction until the contrary appears; but with regard to inferior courts, or those of special and limited jurisdiction, those who claim any right or exemption under their proceedings are bound to show affirmatively that they had jurisdiction."—Ib. It is necessary that we should distinctly define and settle the powers and jurisdiction of courts-martial. They are undoubtedly courts of special and limited jurisdiction, having power to hear and determine in the particular exigency, and upon the particular cases, with a view to which they are organized. While acting within the line of their authority they are protected as to errors in judgment; otherwise they are not protected. If they exceed their jurisdiction, they are personally liable.—2. Sir Wm. Bl., 1,145. These principles have been long settled and established.—Ibid., 32. "I remember," says Lord Mansfield,
"early in my time, being counsel in an action brought by a
467 carpenter in the train of artillery against Governor Sabine, who
was governor of Gibralter, and who had barely confirmed the sentence of a court-martial by which the plaintiff had been tried and sentenced to be whipped. The govornor was very ably defended, but nobody ever thought the action would not lie and it being proved on the trial that the tradesmen who follow the train of artillery, are not liable to martial law, the court were of that opinion,

and the jury accordingly found the defendant guilty of the trespass, as having had a share in the sentence, and gave £500 damages." Mostyn *vs.* Fabrigas, 1 Smith's Leading Cases, 356. "A court-martial," says Chief Justice Marshall, has no jurisdiction over a justice of the peace; as a militia man he could never be legally enrolled, and it is a principle that a decision of such a tribunal, in a case clearly without its jurisdiction, cannot protect the officer who executes it. The court and the officer are all trespassers.—3 Cranch, 357; see also the authorities cited by Mr. Greenleaf, vol. 1, sec. 470, note 1.

468 These authorities are conclusive, and require neither comment nor illustration. The right to look behind the judgment of a court-martial, to determine whether the court-martial has jurisdiction over the case, being thus established, we come now to the consideration of the question involved in the trial of this habeas corpus.

Had the court-martial that tried McKee, and sentenced him to be shot to death, jurisdiction over him? We have already seen that the court-martial held that McKee was not a major or quartermaster in the service of the Confederate States; that, as agent of the treasury, he was not under the control of the military authorities, &c., and that he was not a retainer of the armies of the Confederate States, serving as such with the armies in the field, &c. McKee being retained under the judgment of the court, and the approval thereof by the proper officer, as that judgment decided that he did not possess any of the three capacities above mentioned, it follows that he is not detained in any of them. It is therefore quite clear that the inquiry before me does not embrace the question whether McKee really possessed any of these capacities. But I may be permitted to observe that I entirely concur with the court-martial in the conclu-

469 sion to which they came, that McKee was not subject to their jurisdiction by reason of the capacities or character just set forth.

But the court-martial claimed to be vested with authority to try McKee in four different capacities, because—

1st. "He was acting and serving in the trans-Mississippi department and under the control of the military authorities governing said department of the Confederate States." The "finding" of the court-martial is unintelligible. It does not state in what capacity McKee was acting, or in what manner he became subject to the military authorities. For all that appears to the contrary, he may have been acting for and serving himself, or he may have been acting for and serving a neutral power, or a citizen of the Confederate States. The specification under which this "finding" was made, charged that McKee was a major and quartermaster in the military service of the Confederate States, acting and serving as such in the trans-Mississippi department, and under the control of the military authorities governing said department of the Confederate States. This

470 is sufficiently clear, but the court-martial, by ignoring from the "finding" the words "major and quartermaster in the military service of the Confederate States," and the words "as

such," reduced it to an absurdity, unless they intended to hold McKee under this "finding" as a simple citizen, precisely as they held him under another "finding." I shall assume this to be the true interpretation, and shall defer its consideration until I take the question whether McKee, as a non-military person, was liable to trial by court-martial.

2d. The court assumed jurisdiction over McKee, as "agent of the treasury department of the Confederate States for the purpose of purchasing cotton of the planters, which was to be used for the purchase and payment for supplies and military stores for the army and navy of the Confederate States."

If this "finding" be good law, it would follow that every agent of the treasury department engaged in the purchase of supplies for the army and navy, was impressed with a military character, and amenable to a military tribunal, although there is not a word
471 in the articles of war that subjects such agents to their rules and discipline. Every agent in Europe or elsewhere, purchasing supplies for the army and navy, although such agent is taken from the walks of private life, receives no military appointment, and enjoys no military rank or position, is brought within the purview of a highly penal statute—the rules and articles of war, although that statute, neither directly nor by implication, can be intended to include them. The war department doubtless has its agents abroad, and probably at home, making purchases for the army, but I cannot understand how even they can be regarded as military persons, nor have I heard or read any argument from counsel explanatory of the mode by which a civilian, by accepting an agency from the treasury, or even the war department, for the purchase of army supplies, becomes, at once, metamorphosed into a soldier, and answerable to a tribunal created under a statute establishing rules and articles of war expressly declared to be enacted for the government of the "armies." And if an agent of the treasury department, no matter for what purpose the agency is established, is subject to trial by a court-martial,
472 how can we possibly escape the inference that the principal, the secretary of the treasury, is equally liable, unless you can point out in law some provision that embraces the one and excludes the other? This is the logical result of the extraordinary opinion of the court-martial. But, as a matter of fact, it will be seen hereafter that McKee was not engaged in the purchase of cotton to be used in the purchase and payment for supplies and military stores for the army and navy of the Confederate States, except in a single instance, and to carry out a contract made before his appointment. The court-martial erred in its facts as well as law. McKee's real position, and indeed his only position, was that of an agent of the treasury for the purchase of cotton to carry out certain financial schemes of the government. It was proved on the trial that Mr. Memminger, the then secretary of the treasury, refused to give McKee permission to purchase cotton to pay for military supplies. But the evidence on this subject will be more appropriately considered under the next head.

3. The court-martial found that McKee "was a member and
473 officer of the military bureau known and designated as the cotton bureau of the trans-Mississippi department, and under the control of the military authorities governing the trans-Mississippi department of the Confederate States, and serving as such with the armies of the Confederate States in the field in said department." It will be observed that the court-martial had already found that McKee was an agent of the treasury department, and that, in that capacity, he was not under the control of the military authorities governing said department (meaning trans-Mississippi) of the Confederate States, serving as such in the armies of the Confederate States in the field west of the Mississippi river. By reference to the specification of the capacities in which McKee was charged, it will be seen that in the "finding" in the second specification, the words in italics were stricken out by the court, (ante.) It now remains to be considered how it happened that McKee, an agent of the treasury department, not under the control of the military authorities, &c., became an officer and member of the cotton bureau, &c., or rather, I
474 should say, by what evidence and by what reasoning the court-martial arrived at the conclusion that such a transmutation had taken place. Properly to understand the subject, I shall have to go into a detailed examination of the evidence.

On the 17th September, 1862, Mr. Memminger, the secretary of the treasury appointed McKee general agent for purchasing cotton for the government in the State of Texas and western Louisiana. On the same day, Mr. Memminger addressed a note to the secretary of war, informing him of McKee's appointment, and requesting the secretary of war that, in order to enable McKee to perform his duty (making purchases of cotton for the government) without obstruction or delay, it will be necessary that the agents and persons employed by him shall be relieved, for the time being, from the operation of the conscript law. You will, therefore, please give him the necessary authority to this effect, and furnish him with such other facilities as he may require. (See record-letters of Mr. Memminger.) Upon this communication the secretary of war made an indorsement, directing the proper officers to detail for duty with McKee such
475 persons as McKee might require, who were of conscript age, &c.

On the 28th Nov., 1862, Mr. Memminger informs McKee that Judge Hart, of San Antonio, had been commissioned by the war department to make purchases of cotton in Texas, with a view to furnish army supplies. On the 2d Feb., 1863, Mr. Memminger, by letter to McKee, restricts his purchases of cotton to western Louisiana, with an unimportant exception. 31st of March 1863, in a letter to McKee, he says: "Your letter of Feb. 24th, from Houston, and of March 8th, from Alexandria, have been received; the latter enclosing your report of cotton purchases, with accompanying vouchers, and the former sundry orders, &c., of General Magruder concerning the purchases of cotton for military purposes. Although I cannot perceive any good reason why an agent of the treasury de-

partment should purchase cotton for the army when a quartermaster could have performed the duty equally as well, yet under the circumstances of the case I will not withhold my approval." When McKee was appointed agent of the treasury for the purchase of cotton for the government he had been instructed to buy cotton, also to
476 carry out the contract of the war department with Chamberlayne & Co. for army supplies.

In Mr. Memminger's letter of March 31st, 1863, he tells McKee, all the duties which were assigned to you with regard to filling the contracts with Chamberlayne & Co., in Texas, will necessarily have to be performed by Mr. Sampson. In a letter of April 23, 1863, the secretary of the treasury writes to McKee: "Where the cotton is endangered by the enemy, you will consult with the military authorities before you take any action." 15th of May, 1863: "The secretary directs that you will not purchase cotton on the coast of Louisiana for the purpose of paying for military supplies. The war department can make such purchases, if it thinks proper, through its own agents."—Letter of A. Roane. On the 17th of July, 1863, McKee is again instructed to consult with the military authorities when cotton is in danger of falling into the hands of the enemy. Letter of A. Roane.

Down to the 17th of July, 1863, it thus appears that McKee was engaged in the purchase of cotton for the government; that with the single exception of purchasing cotton to pay Chamberlayne &
477 Co. for army supplies, he was purchasing in behalf of the treasury. Indeed, he was substantially forbidden to buy cotton for the purpose of paying for army supplies, and was told somewhat tartly by Mr. Memminger that "the war department can make such purchases, if it thinks proper, through its own agents."

On the 3d of August, 1863, General Smith, commanding the trans-Mississippi department, issued the following general order:

HEADQUARTERS DEP'T TRANS-MISS.,
Shreveport, La., Aug. 3, 1863.

General orders, No. 35.

Lieut. Col. W. A. Broadwell is announced as chief of the cotton bureau for the department of trans-Mississippi. All government agents for the purchase, collection, or other disposition of government cotton are directed to report to and receive their instructions from Lieut. Col. Broadwell.

By command of— General E. KIRBY SMITH.

(Signed) L. S. ANDERSON,
Assistant Adjutant General.

This is the general order which established the "military bureau known and designated as the cotton bureau," by the operation
478 of which it is contended McKee, the treasury agent, was transmuted into an officer and member of the bureau, subject to the control of the military authorities and serving with the armies

of the Confederate States in the field. About seven weeks after this order was promulgated Mr. Memminger addressed the following letter to Gen. Smith:

TREASURY DEPARTMENT, C. S. A.,
Richmond, Sept. 28, 1863.

SIR: Mr. A. W. McKee, general agent of this department to purchase cotton in the State of Louisiana, has transmitted to me your order of August 3, 1863, erecting a cotton bureau under charge of Lieut. Col. Broadwell, for the States west of the Mississippi river.

The interruption of the postal and other means of communication with the trans-Mississippi region has rendered it impossible to keep up the correspondence with the agents necessary to the proper conduct of the business intrusted to them, and your action therefore looking mainly, as I understand it, to the preservation of the government cotton, meets my approval. All the cotton already pur-
479 chased for this department, or to be purchased hereafter, is needed, and indeed is already pledged, to carry out certain financial schemes of the government, and it is therefore hoped that you have placed no restriction upon the purchases, wherever cotton can be obtained in safe localities.

While it is proper that the agent should report to Lieut. Col. Broadwell and receive instructions from him in all that relates to the preservation of cotton in danger of falling into the hands of the enemy by removing it out of their reach, or to its destruction if it it cannot be preserved, yet it is desirable that they should also render all their regular reports, and transmit by every suitable means of conveyance their invoices, to this department, to be recorded and digested on the books of the produce loan office. Please direct Col. Broadwell to report to this department when practicable.

I am, very respectfully, your obedient serv't,
(Signed) C. G. MEMMINGER.

Lieut. Gen. E. KIRBY SMITH,
Commanding trans-Mississippi Department.

480 A copy of this letter was sent by the secretary of the treasury to McKee. We learn from it that all the cotton McKee had purchased, or should thereafter purchase, for the department, was pledged to carry out certain financial schemes of the government; that the cotton bureau was recognized by the treasury, and that McKee was instructed to report to it, and receive instruction from it in all matters relative to the preservation, destruction, or removal of government cotton beyond the reach of the enemy. To this extent and no further did Mr. Memminger go. The instructions to McKee to report to Broadwell, and receive instructions from him in everything appertaining to the preservation, removal, or destruction of government cotton effected no change whatever in the relation McKee bore to the treasury department. He was still its agent, with the same powers, duties, and responsibilities previously attached to him. He was still to purchase cotton for the government to carry out its financial schemes, not under the orders of Broadwell or Smith, but

under instructions from the treasury, and as the agent of the treasury to be controlled by Broadwell only in everything concern-
481 ing the preservation, destruction, or removal of cotton. Such is only the construction to be placed upon the letter of Mr. Memminger. This was the interpretation McKee placed upon it, for he instructed his agents, Lauve and Belknapp, "not to report to Col. Broadwell any further than allowed to do by the secretary of the treasury."—See testimony of Belknapp. If further confirmation was needed to show that the secretary of the treasury regarded McKee as agent of the treasury after the promulgation of general orders No. 35, it will be found in the fact that more than four months afterward McKee was instructed that "information about the condition of things in your purchasing department is so limited that it is impossible to give you any specific instructions. You will therefore be compelled to exercise your best discretion, in consultation with the military authorities, to do whatever the exigencies of your situation may demand. You will therefore report as frequently as possible, and keep this office well advised of your operations, as well pertaining to the purchase of cotton as to the measures you may take for its
482 preservation."—Letter of A. Roane, ch'f clerk prod. loan off., Dec. 19, 1863; see also letter of P. W. Gray, agent of the treasury, trans-Miss. dep't, to McKee, dated 21st May, 1864, subsequent to McKee's arrest.

But the court-martial appears to have given to general order No. 35 a broader signification than that in which the treasury department alone recognized it, and attached to it a power to which it can justly lay no claim. The effect given by the court-martial to this order grows out of the evidence of Gen'l Smith, who was a witness in the case, summoned by the prisoner.

The following questions were put to Gen'l Smith:

Was A. W. McKee in the military service of the Confederate States when you issued order No. 35, assigning Lieut. Col. Broadwell as chief of the cotton bureau, and ordering all purchasing agents to report to him?

Ans. Not that I am aware of.

Question. Was the accused under your control previous to the organization of the cotton bureau?

483 Answer. I know nothing of him.

Question. Were you authorized by the secretary of the treasury to assume control over the agents of the treasury department, previous to the issue of order No. 35, establishing the cotton bureau?

Answer. I received no authority from the secretary of the treasury. I felt authorized to do so under the instructions that I received from the secretary of war, and even had I no authority, I felt authorized to assume the control of such agents, in so far as to make them my agents, under my instructions. I felt authorized to organize bureau, and take all the authority that was necessary for maintaining the department, and supporting the armies in the field. Record, page 219.

These answers are very remarkable. From them it appears that

McKee was not in the military service of the Confederate States previous to the publication of general order No. 35, and up to that time he was not under the control of General Smith; that the sec-
484 retary of the treasury gave General Smith no right to control the agents of the treasury, but General Smith felt authorized to control them under instructions he had received from the secretary of war, and that if he had not received such instructions, he "felt authorized to assume control of such agents, in so far as to make them his agents."

The instructions of the secretary of war are not in evidence, and I think it highly probable they were misunderstood by General Smith. But if the secretary of war directed General Smith to take control of treasury agents, he gave instructions that he had no right to give. The treasury agents were appointed by the secretary of the treasury under the provisions of law, and the war department had no more authority to command them than the post office department. But General Smith, not content with claiming power over treasury agents, under instructions from the war department, "felt authorized to assume control over such agents, so far as to make them his agents." Where did General Smith derive this authority to make an agent of the treasury his agent? Under what act of congress? Under
485 what rule of law? This assumption of power finds no support in any law. General Smith can assume no powers of any sort. Every privilege or right that he possesses is founded in law, and every power exercised by him not founded in law is an usurpation, for which he is answerable to the civil or criminal tribunals of the country. This is a government of law. General Smith can lay his hand on no man's person, enter on no man's premises, take possession of no man's property without warrant of law, but at his own proper peril, a peril which he would encounter to the same extent as if he held no military rank. These are truisms which I am almost ashamed to put on paper, but under present circumstances, when the military authorities of this department are far removed from the enlightened control of the chief magistrate of the nation, and when such testimony as I am now examining was deliberately given in open court by a general officer exercising military command in three States, it is proper to announce them. It sometimes becomes important to place on record
486 trite truths, when, if ever known, they are forgotten or disregarded by those whose duty it is to respect them.

But this is not all of the evidence given by General Smith. He was asked "when you ordered the agents of the treasury department to report to Lieut. Col. Broadwell, as per order No. 35, did you mean to subject them to military authority, or did you not simply intend to subject them to the control of Lieut. Col. Broadwell, as far as their duties as cotton purchasing agents were concerned. Answer. I meant to subject them to military authority, and would have unhesitatingly placed any of them in irons had they refused to obey. I regarded the cotton bureau as a military bureau, organized for the purpose of purchasing supplies for the army, and for the preservation of the cotton from destruction.—Record page 212. It is obvious from this,

that in the judgment of General Smith, agents of the treasury department, whom he testifies were not under his control, could by a general order become transformed into military persons, and liable, at his arbitrary will, to the gentle discipline of "irons." I do not know how to characterize such pretensions without going be-
487 yond the decorum of a judicial opinion. Under what statute, or on what principle, can such pretensions be sustained? They find no vindication in any legal truth; "the little finger of the law" says one of the greatest of England's great judges "is heavier than the loins of prerogative," and all the orders of all the generals and all the lieutenant generals in the land cannot stir the beam if the smallest rule of law rests on the opposite scale.

Conceding that General Smith had full authority to eetablish the cotton bureau, and admitting that it was a military bureau, I have already shown that beyond the instructions of the secretary of the treasury, McKee, the secretary's agent, under the law could not be made a member or officer of it. But suppose he did belong to this military bureau; still that did not impress him with a military character; or if it did—yet, unless the rules and articles of war included as subject to its provisions all persons belonging to a military bureau, or all persons impressed with a military character—McKee
488 could not be tried by a court-martial. The rules and articles of war was made for the government of the armies, and all persons not specifically designated in them as liable to their provisions, are protected from their operations. The largest and most important military bureau in the confederacy is the war department, and yet I do not suppose it will be pretended that the secretary of war can be tried by a court-martial. Surely the secretary of war is more impressed with a military character than an agent of the treasury, purchasing cotton for the government with instructions to report to a military bureau; or an agent of the treasury engaged in purchasing cotton to be exchanged for supplies for the army, with orders to report to a military bureau; or a member of a military bureau holding no military rank and not a soldier. And why is it that the secretary of war cannot be tried by a court-martial, even supposing that he is impressed with a military character? The answer is plain. He does not belong to any of the class of persons who, by the rules and articles of war, are subject to their discipline. But I proceed a
489 step further. If the secretary of the treasury, by approving general order No. 35, had intended to recognize McKee as a member of the cotton bureau, and through it to subject him to military control, then the secretary would have done what was vain and futile. The secretary of the treasury could not confer upon the cotton bureau power over McKee which he did not himself possess. If McKee had disobeyed the orders of the secretary, or embezzled the funds or cotton with which he was intrusted, the secretary could but have removed him from office in the one case, or make an affidavit for his arrest in the other. This was the limit of his power. Beyond it the secretary could not go. How then is it possible that he could, by ordering McKee to receive instructions from the cotton

bureau, or by directly conferring on its chief all the authority ever McKee possessed by himself, have placed McKee under the control of the military authorities, so as to make him responsible to them for any violation he might commit of the rules and articles of war, and so render him responsible to a military tribunal? The authority
490 of the secretary being bounded by the law, and as the law gave him no power over McKee but to deprive him of his agency, it is very clear he would delegate no greater power to another.

The 6th article of war provides that "all sutlers and retainers to the camp, and all persons whatsoever serving with the armies of the Confederate States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war." It will be observed that under the specification I am discussing, McKee was convicted as "serving with the armies in the field," in his capacity as a member or officer of the military bureau, known as the cotton bureau. I do not find in the record any evidence bearing upon the inquiry as to whether McKee served in the army in any capacity, except the evidence of Gen. Smith. I think the general was the only witness to whom any question on that point was even asked, and he was asked one. That question was—

"Did the accused ever serve with the armies of the Confederate States in the field? If yes, then state when and where did he so serve. State fully and particularly in what capacity did he serve?
491 "Answer. The accused was, in his duty as an agent of the cotton bureau, necessarily operating in the same section of country in which the troops were serving. His duties were intimately connected with the operations of the troops, he having charge of cotton near the enemy's line, which had to be moved or destroyed under the orders of and at the time chosen by the immediate commander of those troops. He also acted, I believe, under the orders of Gen'l Taylor, the commander of the district, though I will not be positive as to that."—Record, page 218. The answer of the witness is unsatisfactory. He was asked, Did the accused ever serve with the armies of the Confederate States in the field? If yea, when and where? To this question there could have been a categorical reply, yes or no, stating the time and place, with any explanation the witness might have thought proper to make. But what was the answer? That as an agent of the cotton bureau, McKee was necessarily operating in the same section of country in which the troops were serving. That is to say, that McKee had to buy cotton, (allowing that to be part of his duty,) move cotton, or destroy cotton in the same
492 section of country in which the troops were serving. But did this make him a person "serving with the armies in the field." The witness does not commit himself to that; "his duties," says the witness, "were intimately connected with the operation of the troops." So they may have been, and yet he might not be serving with the armies in the field. There are many persons whose duties might be intimately connected with the operations of the troops in the field, and might also have been discharging them in the same section of

country in which the troops were engaged, who could not be regarded as serving with the armies in the field. A contractor who had stipulated to furnish beeves to the army, might have been driving the cattle in the same section of country in which the troops were moving, and certainly his duties would be very seriously associated with the operations of troops. And yet it would hardly be asserted that he was subject to the rules and discipline of war. A planter who had stipulated to open a road for the army through his woodland, or the secretary of war, who had promised re-enforcement at a certain time, or the master of a steamboat, who had
493 bound himself to transport troops, all these may have been intimately connected with the operations of troops; and yet it would be little less than ridiculous to regard them as serving with the armies in the field, within the meaning of the 60th article, and subject to the discipline of war. Without undertaking to define the meaning of words "all persons serving with the armies in the field," in the 60th article of war, I will state generally that I suppose they were intended to embrace those persons who, though not belonging to the army, are yet connected with it while in the field, such as hired teamsters, laborers, servants of officers, &c. The 96th article of war includes all officers, conductors, gunners, matrosses, drivers, or other persons whatsoever receiving pay or hire in the service of the artillery or corps of engineers. And the 97th article takes in the militia and others mustered and in pay of the Confederate States. There is no class left to be covered by the 60th article of war, except that which I have mentioned. To state then generally what I understand by the article, I take it to mean all persons who are
494 under hire or pay with the army, so long as they remain with the army, and while the army is in the field. It is little less than an absurdity to say that a bureau officer, who happens for the time being to be in the same section of country in which the army is moving, called there by his duties as a bureau officer, can be regarded as one serving with the army in the field. The testimony of Gen. Smith is the only evidence in the record bearing upon this question, and therefore the only evidence which the court-martial could have considered as proving the particular capacity in which McKee was charged under the 60th article of war. I have no hesitation in saying that there is no foundation whatever for holding him under the 60th article. I cannot but express a regret that I have not access to a single work on courts-martial, and have therefore no means of knowing how the 60th article is interpreted by approved writers, and what the decisions of courts-martial have been in relation to it. Yet I entertain no doubt that the opinion I have expressed is correct, and I am very sure that the testimony of General Smith is in-
495 sufficient to bind McKee as one serving with the army in the field. A position, indeed, which I do not understand Gen. Smith himself to take.

4. The court-martial further convicted the accused as Andrew W. McKee, without any military capacity or status whatsoever, and in no manner connected with or serving with the army. This brings

up the question whether a civilian is liable to a court-martial, unless he be a foreigner, and charged as a spy under the second section of the act establishing the articles of war. The petition for the habeas corpus alleges that McKee is a citizen of the Confederate States, and this allegation is not denied; so that the question is really narrowed down to this. Is a citizen of the Confederate States—not an officer or soldier in the army, or in any manner whatsoever connected with or serving with an army in the field—within the rules and articles of war, and subject to trial by a court-martial. The court-martial decided that he is so subject; and the counsel
496 for the prosecution places his liability where of course the court-martial placed it, under the 56th and 57th articles of war, which are in these words:

Art. 56. Whosoever shall relieve the enemy with money, victuals, or ammunition, or shall knowingly harbor or protect an enemy, shall suffer death, or such other punishment as shall be ordered by the sentence of a court-martial.

Art. 57. Whosoever shall be convicted of holding correspondence with or giving intelligence to the enemy, either directly or indirectly, shall suffer death, or such other punishment as shall be ordered by the sentence of a court-martial.

McKee was charged and found guilty under these two articles, of—

1st. Holding correspondence with the enemy.

2d. Relieving the enemy.

It cannot escape observation that McKee was charged under the 56th article with "relieving the enemy," not in the language of the article of "relieving the enemy with money, victuals, or am-
497 munition;" but as no point was made of this by counsel, and, indeed, it was by no means necessary, I shall pass it over.

The position taken by the learned counsel for the prosecution in the written as well as the oral argument is in these words: "In these two articles, (56 and 57,) the scope of the disposition which they contain is not limited by any expression restricting it to military persons or persons belonging or attached to the army. It refers to all mankind. It applies to every class of society, civil or military, national or foreign. Indeed the term used is so very comprehensive that there is no portion of the human family, but can be brought under its purview." In other words, and in brief, the word "whatsoever" in these two articles, includes every human being in every part of the world.

If, therefore, any person holds correspondence with the enemy, he is subject to a trial by court-martial, and if convicted, shall suffer death or such other punishment as shall be ordered by the sentence of a court-martial. As in the article 57 there is no limitation to the word "whosoever" according to the argument, so there is
498 no qualification to the word correspondence, and it therefore necessarily follows that whatever the nature of this correspondence, and "whosoever" shall have it with the enemy, is within the penalty denounced by the article. Thus, if the president were to make peace propositions to the enemy by correspondence with

him, he makes them at the hazard of his life. If the general commanding this department were to open a correspondence with the enemy as to the mode of conducting the war, and threaten retaliation for the outrages committed by him in this State; or the commissioner of exchange were to address the enemy on the subject of prisoners, or the foreign ministers at Washington keep up their usual correspondence with the enemy, (for the word "whosoever" takes in, according to the argument, the whole human family, national and foreign,) all alike would be amenable to a military court, with the death penalty suspended over them. It is somewhat surprising that the extraordinary consequences that inevitably flow from the premises taken by counsel did not drive him from his position, or at least
499 so startle him as to induce a doubt before he announced so broad a proposition.

But it was insisted on in its whole length and breadth as I have quoted it. It appears to me that it refutes itself. In support of it greater stress was laid upon the difference between the language of the 55th article of war and that of the 56th and 57th. In the 55th the words are "whosoever belonging to the armies of the Confederate States," &c. Why, it was asked, are words "belonging to the armies of the Confederate States," which are found in the 55th article, stricken from the 56th and 57th, and, being so stricken from them, the word "whosoever" in them necessarily includes all civilians as well as those "belonging to the armies." It is not difficult to make a satisfactory reply to this reasoning. The articles of war are found in the act entitled "An act for establishing rules and articles for the government of the armies of the Confederate States." All the articles do not apply to the same class of persons. Some have reference to officers; some to non-commissioned officers; others to privates, and some to chaplains; some again apply to sutlers, camp retainers and persons serving with the armies, and yet others to
500 persons receiving pay or hire in the service of the artillery or corps of engineers. It is clear that many of those subject to the rules and discipline of war do not belong to the armies of the Confederate States, for they are at liberty at any time at their own pleasure to leave the army, as one belonging to the army—an officer or soldier for instance—cannot do without permission of those who alone have lawful authority to grant permission. Article 55 applies to all belonging to the army, while articles 56 and 57 apply to those who, though not belonging to the army, are yet connected with it, and subject to the rules and articles of war by express words of the statute itself, such as sulters, camp retainers, &c. Article 76 is, if possible, more universal in its application than article 56 and 57. "No person whatsoever," says article 76, "shall use any menacing words, signs, or gestures in presence of a court-martial, or shall cause any disorder or riot, or disturb their proceedings on the penalty of being punished at the discretion of the court-martial." Cer-
501 tainly the words "no person whatsoever" include the "whole human family," national or foreign, fully as much as the word "whosoever." Yet the acts denounced in article 76 are mere con-

tempt of court, and it is not to be conceived that congress intended to confer upon a court-martial the power of inflicting on a citizen for a contempt any punishment that they might choose to inflict—a court-martial, called in the complimentary exordium of the judge advocate in his argument to it, (filed in this case,) "a board composed of stern army officers accustomed to have their own way." If an exception can be made to the words "no person whatsoever" in the 76th article, certainly an exception can be made to the word "whosoever" in the 56th and 57th articles. An exception has been made to the words "no person whatsoever" in the 76th article, for, by reference to paragraph 889 of the regulations, we find it laid down that "the 76th article of war does not confer upon a court-martial the power to punish its own members." The fact is that the word "whosoever" must be construed in connexion with the con-
502 text. The statute, according to the object avowed in the title, is to establish rules and articles for the government of the "armies," and nothing more, and by all just rules of interpretation "whosoever" must be taken to mean whosoever of those persons designated in the law as are subject to its provisions. But if the word "whosoever" was intended by congress to include non-military persons, it would be in direct violation of the constitution of the Confederate States. Paragraph 16, section 9, article 1st of the constitution provides: "No person shall be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger," &c. Paragraph 17, same section and article, declares that "in all criminal prosecutions the accused shall enjoy the right to a speedy public trial by an impartial jury of the State and district wherein the crime shall have been committed, &c., and para-
503 graph 3d of section 2d, article 3d, of the constitution ordains that "the trial of all crimes, except in cases of impeachment, shall be by jury," &c.

There are but two exceptions in the constitution to the right of trial by jury; one, is "in cases arising in the land or naval forces, or in the militia when in actual service in time of war and public danger," and the power is specifically given to congress "to make rules for the government of the land and naval forces," par. 14, sect. 8, art. 1st; and under this power, thus granted to congress, the act was passed, entitled "An act for establishing rules and articles for the government of the armies of the Confederate States." The other exception to the right of trial by jury is in cases of impeachment. The court-martial can find no exception of any kind to the word "whosoever" contained in a section of a statute relating exclusively to the articles of war for the government of the armies, but yet, can find exceptions to the word "all" (in all criminal prosections the accused shall have the right of trial by jury) in the organic law, other than
504 those contained in the constitution itself. The constitution and the articles 56 and 57 of the rules of war, if understood in the sense attached to them by the court-martial, are in direct con

flict. They cannot stand together. If, in all criminal prosecutions, the accused shall have the right of trial by jury, except in those cases arising in the land and naval service, &c., and in case of impeachment, a law of congress, which deprives any one not in the land or naval service, &c., of trial by jury, is immediately in violation of the constitution, and is necessarily null and void. Human ingenuity cannot reconcile the interpretation placed on the 56th and 57th articles of war with the fundamental law of the land.

The impatience of the public in times of great excitement to bring to punishment a party believed to be guilty of crime, often induces the inconsiderate to denounce the trial by jury, its difficulties and delays; but the experience of mankind has shown that there
505 can be no protection from the caprice of power, or the will of men in authority, accustomed to have their own way, but in the trial by jury, a mode of trial borrowed from the English law, sanctified by the framers of the Constitution of the United States and the Confederate States, and embodied as a fundamental principle in the constitutions of the several sovereignties which make up this confederacy and those which compose the United States.

Let us not imitate the bad example set by the military despotism which has usurped the once free government of that country with which we are now at war. Under it, courts-martial have shot, imprisoned, and banished citizens. It was not sympathy for the distinguished exile that a few months since roused our people, but sympathy for a violated constitution, and for indignation at the outrage that deprived him of his great right of trial by jury. That right is the law of the land here as well as there. Let all remember that, who sanctions wrong to-day may be its victim to-morrow. Let none forget that there is no such thing as liberty without law. In war, if possible even more than in peace, should these plain truths be
506 borne in mind; for personal rights and the rights of property, too, are in greater danger at the one time than the other. Personal safety will ever be insecure, particularly in war, if we hold not fast to the trial by jury, and demand it in every case in which it is guaranteed by law.

But that the articles of war apply without exception only to those persons belonging to or connected with the army, has been repeatedly decided. Indeed I never had any reason to believe that a different opinion was entertained before the trial of this case.

"Military law has its foundation and limits in the statutes for establishing rules and articles for the government of the army and navy, and in the instructions and orders issued by the executive magistrate pursuant thereto, and in virtue of his authority as commander-in-chief. Its jurisdiction extends only to those who are part of the army in its various grades and description of persons, and it is limited to breaches of military duty."—3 Greenl., sect. 468. See the following cases cited by Greenleaf: 2 H. Bl., 100; 1 McArthur
507 on Courts-Martial, 33–37; 1 Kent Com., 341, note; Wolton *v.* Gaven, 15 Jur., 329, 16 Ad., and Ell., 48; N. S. Mills *v.* Martin, 19 Johns, 7, 20, 22; Smith *v.* Shaw, 12 Johns, 257. See also Stacy's case, 10 Johns, 328.

In the very learned opinion of Mr. Justice Woodbury, in Luther *v.* Borden, he says: "For nothing is better settled than that military law applies only to the military." Luther *v.* Borden, 2 How., 60.

Again: "And whenever an attempt is made to embrace others in its (military law) operation, not belonging to the military or militia, nor having ever agreed to the rules of the service, well may they say, we have not entered into such bonds, in hæc vincula non veni."

And yet again: "And as a further proof how rigidly the civil authorities require the military to confine even the modified code martial to the military, and to what are strictly military matters, it cannot, without liability to a private suit in the judicial tribunals, be exercised on a soldier himself for a cause not military or over which the officer had no right to order him, as for example, to attend school instruction or pay an assessment towards it out of his wages."

508 See the case of Luther *v.* Borden, and the authority cited by Woodbury, J.

I close this opinion with a brief recapitulation of the points decided:

1. McKee was an agent of the treasury department of the Confederate States, appointed for the purpose of purchasing cotton to carry out certain financial schemes of the government.

2. Except the order given to him to purchase cotton to execute a contract made by the war department with Chamberlayne & Co., for obtaining army supplies, his agency did not include the purchase of cotton to pay for army and naval supplies.

3. If McKee's agency had included the purchase of cotton to pay for army and naval supplies, such an agency would not have impressed him with a military character, nor subjected him to the discipline of war as laid down in the rules and articles of war.

4. McKee was not an officer or member of the military bu-

509 reau known and designated as the cotton bureau, his sole connexion with that bureau being under order from his principal, the secretary of the treasury, to report to that bureau and receive instructions from it in all matters relating to the preservation or destruction of cotton, or its removal when in danger of falling into the hands of the enemy, which orders the secretary could have annulled at pleasure.

5. McKee might have been an officer or member of the cotton bureau, but having no military rank and not being attached to the army in any manner known to the rules and articles of war, he would not have been included within the meaning of them.

6. McKee was not under the control of the military authorities governing the trans-Mississippi dept., except so far as he was ordered by his principal, the secretary of the treasury, to report to the chief of the cotton bureau and receive instructions from him; and this control was limited to instructions for the preservation, destruc-

510 tion, or removal of cotton in danger of falling into the hands of the enmy, and gave no authority to the commanding officer of the trans-Mississippi dept. to subject him to the rules and articles of war.

7. If McKee had disobeyed the instructions of the chief of the cotton bureau, neither the chief of the cotton bureau nor the commander of the dept. could have inflicted any punishment upon him; neither of them could ever, lawfully, have arrested him. The most they could have done would have been to report him to the secretary of the treasury, and that officer could have deprived him of his agency, as the act under which the agent was appointed, authorized him to do.

8. The commanding officer of the trans-Miss. dept. had no authority, by general orders or otherwise, to make a treasury agent his agent.

9. McKee, as a member or officer of the cotton bureau,
511 or in any other capacity, was never serving with an army in the field in trans-Mississippi department, or elsewhere.

10. The word "whosoever," in the 56th and 57th articles of war, does not take in any person not designated in the rules and articles of war as subject to them, nor any citizen not connected with the army in the manner specified in the articles.

11. If the word "whosoever" in the 56th and 57th articles of war was intended to include any class of persons not belonging to or connected with the army, then the 56th and 57th articles of war are in conflict with the constitution of the Confederate States, and are null and void.

12. McKee held no military position, was not connected with the army nor attached to it in any manner known to the rules and articles of war, and was therefore not within their control nor amenable to any military tribunal.

512 13. The court-martial that tried McKee had no jurisdiction whatsoever of him.

It is well settled that whenever a party is discharged from arrest under a habeas corpus, and there is reason to believe that any crime has been committed by him, he is remanded to the custody of the proper officer.

In accordance with this rule, I have ordered that McKee be discharged from the custody of the military authorities, and be delivered into the custody of the marshal of this district, to be held by him until an affidavit, charging him with the offence, can be made, or until further orders from confederate court of this district or the judge thereof.

Indorsed: Exhibit A.

HUGH MADDEN, *Not. Pub.*

The district attorney and the counsel for captors object to the admission of said depositions as evidence in said cause, on the ground that no notice was served upon them of the time and place of taking the same.

513 The following papers were filed in the office of the clerk of said district court, to be read in evidence in the supreme court upon the hearing of the appeal in said cause.

The district attorney and the counsel for the captors object to the admission of said papers as evidence in said cause.

OFFICE PROVOST MARSHAL GENERAL,
DEPARTMENT OF THE GULF, 208 CARONDELET STREET,
New Orleans, January 15, 1864.

I do hereby solemnly and sincerely swear, in the presence of Almighty God, that I will support, protect, and defend the Constitution and government of the United States against all enemies, whether domestic or foreign, and that I will bear true and faithful allegiance and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding; and, further, that I take this oath and assume all its responsibilities, legal and moral, of my own free will, and with
514 a full determination, pledge, and purpose to observe and fulfil it, and without any mental reservation or evasion whatsoever; and, further, that I will well and faithfully perform all the duties that may be required of me by law, as a true and loyal citizen of the United States. And may God help me so to do.

R. W. DOYLE.

Sworn and subscribed before me this fifteenth day of January, 1864.

JOE P. WIGGINS, *Lieut. and A. D. C.*

Filed December 27, 1865.

GEO. P. BROWN, *Clerk.*

Order of the President, as commander-in-chief of the army and navy, to Major General Banks, assigning him to the command of the department of the gulf.

[Copy.]

HEADQUARTERS OF THE ARMY,
Washington, D. C., Nov. 9, 1862.

Major General N. P. Banks, commanding.

515 GENERAL: The President of the United States, having assigned you to the command of the department of the gulf, you will immediately proceed with the troops assembling in transports at Fort Monroe to New Orleans, and relieve General Butler. An additional force of some ten thousand men will be sent to you from Boston and New York, as soon as possible.

The first military operation which will engage your attention on your arrival at New Orleans will be the opening of the Mississippi, and the reduction of Fort Morgan and Mobile city, in order to control that bay and harbor. In these expeditions you will have the co-operation of the rear-admiral commanding the naval forces in the Gulf and the Mississippi river. A military and naval expedition is organizing at Memphis and Cairo, to move down the Mississippi and co-operate with you against Vicksburg, and any other point the enemy may occupy on that river. As the ranking general in the southwest, you are authorized to assume control of any military forces upon the upper Mississippi that may come within your com-

mand. The line of division between your department and
516 that of Maj. Gen. Grant is therefore left undecided for the present, and you will receive superior authority as far north as you may ascend the river.

The President regards the opening of the Mississippi as the first and most important of all our military and naval operations, and it is hoped that you will not lose a moment in accomplishing it.

This river being opened, the question arises how the troops and the naval forces there can be employed to the best advantage. Two objects are suggested as worthy of your attention. First. On the capture of Vicksburg, to send a military force directly east to destroy the railroad at Jackson and Marion, and thus cut off all connexion by rail between northern Mississippi and Mobile and Atlanta. The latter place is now the chief military depot of the rebel armies in the west. Second. To ascend with a naval and military force the Red river as far as it is navigable, and thus open an outlet for the sugar and cotton of northern Louisiana. Possibly both of these objects may be accomplished, if the circumstances should be favorable.

It is also suggested that having Red river in our possession,
517 it would form the best base for our operations in Texas.

It is believed that the operations of General Rosecrans in east Tennessee, of General Grant in northern Mississippi, and of General Steele in Arkansas, will give full employment to the enemy's troops in the west, and thus prevent them from concentrating in force against you. Should they do so, you will be re-enforced by detachments from one or more of these commands.

These instructions are not intended to tie your hands or to hamper your operations in the slightest degree. So far away from headquarters, you must necessarily exercise your own judgment and discretion in regard to your movements against the enemy, keeping in view that the opening of the Mississippi river is now the great and primary object of your expedition; and I need not assure you, general, that the government has unlimited confidence, not only in your judgment and discretion, but also in your energy and military promptness.

Very respectfully, your obedient servant,

518 (Signed) H. W. HALLECK, *General in Chief.*

Official copy.

(Signed) J. C. KELTON, *Assistant Adjutant General.*

Headquarters of the army, January 20, 1865.

Filed Jan'y 8th, 1866.

GEO. P. BOWEN, *Clerk.*

UNITED STATES OF AMERICA, *Southern district of Illinois, ss:*

I, George P. Bowen, clerk of the district court of the United States for said southern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings had in said court in a certain cause lately pending in said

court, in prize, wherein the United States are libellants and 650 bales of cotton, 100 coils of rope, 16 bales, 8 rolls, and 160 pieces of bagging, 29 pieces of leather; 788 bales, 52 sacks of cotton; 409 bales, 139 sacks of cotton, and 1,000 bales of cotton, is defendant, so far as the same relates to the claim of Wellington W. Withenbury and Ross W. Doyle for 935 bales of said cotton, as the same are now on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth.

GEO. P. BOWEN, *Clerk.*

O

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati.

Supreme Court of the United States.

No. 112.

Wellington W. Withenbury and Ross W. Doyle,
Claimants for 935 Bales of Cotton, Appellants,

versus

The United States.

BRIEF FOR APPELLANTS.

Appeal from the District Court of the United States for the Southern District of Illinois.

R. M. CORWINE,
For Withenbury & Doyle.

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati.

Supreme Court of the United States.

No. 112.

Wellington W. Withenbury and Ross W. Doyle,
Claimants for 935 Bales of Cotton, Appellants,

versus

The United States.

Brief of R. M. Corwine for Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois.

POINTS.

First. The property libeled in this case, being the property of loyal citizens of the United States, and within their territorial jurisdiction, *inland*, could not lawfully be the subject of capture by the naval forces of the United States as prize of war or otherwise.

Second. The law of nations, or the international law, can not be invoked to deprive a citizen of the United States of his property within the territorial jurisdiction of the United States. That can only be done in pursuance with the constitution and laws of his country.

Third. The fact that such cotton was at one time the property of rebels, but was not so when taken possession of by the naval forces, would not justify its seizure as enemy property by those forces, so as to subject it to the law of prize.

Fourth. As long as the rebels held, with the strong hand of war, any of the territory of the United States, to the exclusion of the laws and officers of the United States, citizens thereof, then in such territory, might lawfully sell to or buy property of those rebels, whether the latter had such transaction individually or under the assumed name of a Government; provided, it does not appear that the same was done with the *intention* and for the purpose of aiding such assumed Government in its unlawful usurpation.

Fifth. If such purchase or sale was made in the usual way in which business was transacted in that country, and for a valuable consideration, free from the intention aforesaid, it is valid.

Sixth. When the Government resumed its jurisdiction, and once more inaugurated its powers by replacing its officers in control, in that country, the title of property, legitimately acquired by its loyal citizens, although defective by reason of the interruption of war, will be respected and validated. This being the rule with respect to foreign wars, its application to the recent situation of our loyal people in the rebel States is most obvious.

Seventh. Having *licenses* granted them by the proper authorities of the United States for that purpose, it was lawful for Withen-

bury & Doyle to run their steamboats and carry on trade in the lower Mississippi and Red Rivers and their tributaries. No power less than the United States could deprive them of those rights.

Eighth. The fact that they were there with their property, engaged in their legitimate trade, when that country was put under military rule by those in rebellion against the laws of the United States, and that they were prevented from leaving with their property by mob violence and military surveillance, does not make them rebels and deprive them of their property, or impair their constitutional rights as citizens of the United States. They could be deprived of neither except by their own voluntary act of renunciation or transgression.

Ninth. Whatever they did, under *duress* or by *compulsion*, or in order to avoid military conscription, in aid of the rebel cause, would not deprive them of their legal and constitutional rights as citizens of the United States.

Tenth. Those rights, being suspended during the war, the moment it was over they became active and effective, and Withenbury & Doyle could resume their property and former political status toward the United States. This is a right springing out of the Constitution and Laws of the United States, but the doctrine of *post liminii* has significant application to this situation of affairs.

Eleventh. Any property acquired by them, from these *usurped* authorities, in the way of reward or payment for the *impressed* services of these men or their boats, or the value of the cotton, may be lawfully held by them as in *lieu* of the property belonging to them when war broke out.

Twelfth. Property thus acquired, although it remains within the lines of the insurgents, is not stamped with the disabilities of

enemy property, but is entitled to the fostering and protecting care of the Government the moment it is removed beyond those lines.

Thirteenth. By the laws of the United States, and more especially by the laws and usages of Louisiana, the title to personal property in that State passes to a *bona fide* purchaser by the simple act of transfer of the bill of sale and the planter's *possession* receipt. In such case no actual delivery of the property is necessary. The planter becomes the trustee and custodian of the property for the holder of these title papers.

Fourteenth. Unless the President has actually caused the seizure of property, falling within the operation of the disabling statute of July 17, 1862, the statute is not operative, and no rights arise under it.

Fifteenth. That statute, having been passed in aid of the army, and to assist in suppressing the rebellion, while the former was in active operation in the performance of that duty, ceased to be effective after the war ended, and no seizure could be made under it. It expired by its own limitation.

Sixteenth. The title of a vendee, made in good faith, before actual seizure by the President's order, *under that statute*, is not affected by the political status of its owner.

Seventeenth. The general law of war does not prevail in determining the rights of the people of the United States to trade with one another, even in time of rebellion; hence it is not *per se* illicit trading for the citizens of loyal States to trade with citizens of disloyal States. The constitution permits it, unless, in the estimation of Congress, the public safety requires a suspension of such intercourse. In that case, as a military or war measure, perhaps they may define and prohibit it in whole or in part; and *thereafter* the

intercourse must be in pursuance of such act of Congress. But reference must be had to that act to determine and define that intercourse and its extent, and the onus of establishing a violation of that act is on the Government.

Eighteenth. The non-intercourse act of July 13, 1861, declares a general prohibition of such intercourse, and pronounces it unlawful, and affixes the *penalty* for its violation by condemning "all goods and chattels, wares and merchandise, *coming from said State or section* INTO the other parts of the United States, and all proceeding TO such State, etc., together with the vessel or vehicle carrying the same, or carrying persons *to* or *from* such State or section, be forfeited to the United States." The property must be caught in the predicament of *passing* from one State to another to bring it within the operation of the law. No other property than this is forfeited by this law.

Nineteenth. The law of nations prohibiting illicit trading with the enemy goes no further than this: the offender must put himself or his property *in motion*, in the direction of the enemy, at a time war is prevalent, before his property can be forfeited for illicit trading.

Twentieth. Withenbury & Doyle, being within the enemy's lines, when the war broke out, with their property, and having made ineffectual efforts to leave, were not there in violation of the act of Congress or the law of nations, and all their commercial transactions while there are referable to their peculiar situation, and not to any act of passing from loyal to rebel lines for the purpose of trading.

Twenty-first. This cotton was not captured in the act of being carried from the enemy's lines into our lines, but it was found in the possession of their agent, where it was raised and baled.

Twenty-second. But were the facts otherwise, neither the law of nations nor this statute can be interposed in this case, because—First, the Government was bound to protect this property and secure it for these claimants. In consideration of information and services to the army and navy, the commanders of the land and naval forces stipulated to do these things; so that if it were before this, property of doubtful title, because of the political status of its owners, these promises, made under the circumstances, would require of the Government to deal with these claimants in good faith. Second, by the very terms of the order of the Government, authorizing this expedition, it was the duty of those in Government employ to protect this property and assist its owners to bring it to market.

Twenty-third. It is a sufficient consideration for such a promise, that the claimants gave valuable information and rendered useful services to the army and navy.

Twenty-fourth. The act of the navy taking the cotton to Cairo, was but the fulfillment of the promises of General Banks and Admiral Porter, and in pursuance with the main object of the Government in inaugurating the Red River expedition.

Twenty-fifth. It is the policy of Governments to reward the patriotism of their own citizens whenever they render valuable and important services to the Government.

Twenty-sixth. Although Withenbury & Doyle may have before been disloyal, and their property, in consequence, laboring under disabilities, yet when they took the oath of allegiance to their Government, some months before the cotton was actually seized, that restored to them their rights of persons and property, and, like the promises of General Banks and Admiral Porter, operated to estop the Government from setting up any claim to this property.

Twenty-seventh. Where a citizen of the United States can neither receive the orders of his Government nor enjoy its protection, he resumes his natural rights, and is to provide for his own safety by any just and honorable means in his power.

Twenty-eighth. Unless it appears that what Withenbury & Doyle actually did for the rebels was *intended* by them to aid the enemy, and that *intent* was manifest, under the circumstances they will be excused for what they did do, even if it appears that the rebels were really benefited thereby.

Twenty-ninth. Not having voluntarily done anything to aid the rebellion, and not having used their property, or suffered it to be used, in aid or promotion of the rebellion, and not having acquired the cotton in controversy by any voluntary act in favor of the rebellion, neither Withenbury & Doyle, nor their property, come within the letter or spirit of the Act of Congress of August 6, 1861.

Thirtieth. If it was unlawful for the rebel Government to deprive them of their property, then it was lawful for Withenbury & Doyle to retake it.

THE CASE.

The gunboats belonging to Rear Admiral David D. Porter's flotilla, on the 8th day of April, 1864, found, on what is known as the Simmons & Tatum plantation, in the possession of an agent, on the Washita River, a short distance below Monroe, Louisiana, nine hundred and thirty-five bales of cotton, which they transferred to boats, which transported the cotton to Cairo, in the Southern District of Illinois, where it was libeled as prize of war, but never condemned as such. The cotton was claimed by *three* parties, who filed their respective claims, all of which were dismissed by order of the Court. These claimants were: 1st. G. A. Le More & Co.; 2d. Grieff & Zunts; and, 3d. Withenbury & Doyle. Grieff & Zunts did not appeal from that order of dismissal, but the other claimants did, and their cases stand on the docket numbered respectively 107 and 112.* They are in nowise connected, except in so far as both claim the same cotton, but upon different grounds; that is to say, G. A. Le More & Co. claim of the same cotton eight hundred and thirty bales, and Withenbury & Doyle claim nine hundred and thirty-five bales —the whole. The purpose of this argument is to show and establish the claim of the latter, leaving out of view the evidence which relates to the title of the former, contenting myself by referring the Court to the argument filed in that case, in exposition of the unfounded claim of G. A. Le More & Co. This claim was dismissed on the sole ground that these claimants came within the prohibitory terms of the Act of Congress of the 13th of July, 1861, which interdicts trading by the inhabitants of the loyal and disloyal districts, and which invalidates every contract between them not founded on a license.

*After this brief was prepared and partially printed, Grieff & Zunts filed their appeal. See my brief against the claim filed in their case, No. 246.

The record discloses these facts, viz: That when the rebellion broke out, Withenbury and Doyle, who were citizens of Ohio, were engaged in navigating the Mississippi and its tributaries in Louisiana, with their steamboats, Homer and Vigo, and their barges. That Withenbury for upward of twenty years, and Doyle for several years, had been engaged in this trade as steamboatmen every fall, winter, and spring. That at this time they were running their boats under *licenses* granted to them by the United States authorities, *and thereafter never had any other license or permit.* That as soon as they were aware of the impending difficulties, which culminated in the rebellion, they made every preparation to leave that country and come North with their property, but that their efforts were all frustrated by armed force and mob violence. The utmost surveillance was kept over all their movements, military guards placed on their boats, and spies set on their individual movements, so that it was impossible to escape with their boats, or for them to leave the Confederate lines themselves. Their boats were *impressed* into the military service, and claimants *compelled* to serve on the boats or go into the Confederate military field service. In this way their boats were so hardly used they soon ceased to be of any great value, and thereafter these claimants were compelled to perform such service as they could that would keep them from being conscripted. They never took the oath of allegiance required of everybody to the Confederate authorities, and never yielded up their true allegiance to their own Government. Regardful of their duty in that respect, they managed, in every way, successfully to keep out of the rebel army, and out of the rebel service, except in so far as they were compelled to take civil employment to support themselves, and keep up the show necessary to avoid conscription. They did not conceal their loyalty to the Union from loyal men, but spoke of it with so much freedom that on several occasions they were threatened with mob law and their lives were in great danger. As soon as the Federal forces reached Red River, in 1863, under General Banks, Captain Withenbury lost no time in seeking that commander and placing his personal services and long experience at his disposal.

All that these men had of property was in that country, the

fruits of years of toil, and they desired to save it if that could be done. General Banks, expecting to return to the Mississippi River before he should take possession and hold the Red River country, advised that Withenbury should remain there till his return in a few weeks; in the mean time he should gather such information of the enemy as might be useful to General Banks in his future movements. Doyle was not then at Alexandria, being somewhere in the interior. But, about the 6th or 7th of January, 1864, by connivance of one of the Confederate officers, he got through the lines and made his way to New Orleans, and bore such information to General Banks as he and Withenbury had gathered, and returned to Alexandria on General Bank's flagboat. Then these men, who had suffered so long, made manifest their loyalty by their works. They reported for duty to the naval officers, and contributed, by their untiring exertions, very largely to save the fleet of steamboats from destruction on the rapids near Alexandria. Their experience was of the greatest value. The testimonials of General Banks and Commodore Porter bear abundant evidence of this.

The events which followed the second visit of our forces to Alexandria are historical, and will in future form one of the most interesting features in the traditions of the war for the Union. None of the noble men who stood by the country on that occasion were more disinterested and made more willing sacrifices than these two claimants. All they had of property was in that vicinity, and a few hours' personal attention to it, after General Banks arrived there a second time, would have saved it. But, to do that, they would have been drawn away from the public duties they had voluntarily assumed for their country; and that they were not willing to do. They remained at their post. They had the assurances of Banks and Porter that they should be protected in their persons and property, and they rested content with those assurances. They were assured that the gunboats had gone up the Washita for their cotton, and that it would be taken to Cairo, and there surrendered to them. But disaster overtook our forces, and these devoted men were compelled to flee to New Orleans. The story of their escape is one of the most thrilling of that

eventful day. They escaped, but not with their property. Except what the gunboats carried off to Cairo and a few bales that found their way to New Orleans, the earnings of years of toil perished with that disastrous enterprise.

For their boats and their long service with the rebels, there was a large sum justly due Withenbury & Doyle. A. W. McKee, the Confederate States Cotton Agent, states it at between eighty and ninety thousand dollars. He was aware of the sufferings and losses of these men. He had known them both before the war; one was his school-fellow, and both were his friends. In his official position, he was authorized to dispose of the cotton to pay the indebtedness of the Confederacy. While there was no *contract* made by the Confederates to pay for the boats or their use, nevertheless McKee felt himself authorized to give Withenbury & Doyle the cotton on account of their large losses and damages. It is true their boats and their own services were *impressed;* nevertheless McKee might well give them, and they might well receive, *in lieu of their boats*, this cotton. Accordingly, in the spring of 1863, McKee ascertained what was their damage, and agreed to give them this lot of cotton on account. In the fall of that year, he laid away the evidences of title for them; and, on the 6th of January, 1864, made them a formal transfer of the cotton by bill of sale, and handing over Simmons' receipt and the weights of the cotton. They were produced and shown to General Banks at New Orleans, in January, 1864, and afterward they were produced and shown to Commodore Porter at Alexandria, in March, 1864, and he retained them for some time. It was on this occasion, being satisfied himself with this evidence, and being equally satisfied with their loyalty and truth, he said that he would furnish these claimants with a convoy to bring this cotton out of the Washita; but afterward, when told that the cotton had been carried off by his gunboats, he said it would be all right at Cairo.

These men were at that very instant of time engaged in the United States service, assisting the commanders of the army and navy in their movements. They had the written permit of the military to bring out two thousand five hundred bales of cotton, *including this very lot*, and the verbal and written promises of Com-

Commodore Porter that this lot of nine hundred and thirty-five bales should receive his protection, and be secured for these claimants. These permits and assurances were given in consideration of their well established loyalty, their long sufferings, and their services and information so freely rendered and given to these commanders for the benefit of their Government. Never having done any act to deprive them of any of their rights as citizens of the United States, these permits, promises, and assurances were only in affirmance of their constitutional rights, which rights neither Congress, the military, nor the Executive could deprive them of. Being in Louisiana, in pursuit of their lawful business, and in pursuance of the rights guaranteed to every citizen of the United States by the constitution, they could not be deprived of their property by the lawless acts of any citizen or combination of citizens, by whatever name or under whatever pretense, and no law or order could lawfully compel them to surrender or abandon their property. While, therefore, the naval authorities might not be compelled to aid them in getting their property away from the enemy's country, nevertheless, having taken it away, these claimants had the lawful right to it and its enjoyment after it was brought from beyond the control of the enemy, and, therefore, the promise of the commodore to restore it to them, gave them no new right, and conferred upon them no new authority to have and control their property. The fulfilment of that promise, on the part of the Government, is a matter of good faith and national honor, which is superadded to their legal rights.

I.

ARGUMENT.

I. The condition of those in rebellion was that of a people who had a military head, whose laws and orders were supreme, and had to be obeyed within their territory of occupation. Our Government acknowledged the war power of this head or government, met its armies, struggled with them, and was governed in such struggles by the laws of war which govern and control opposing armies of independent nations at war with each other. Their officers and soldiers were treated as prisoners of war, and the property on their persons was held sacred, and remained unmolested. Whenever there was occasion to do so, the Government made clear distinctions between the individual property of the people and that of the so-called Confederate Government.

It is believed there can not be found a single instance where our Government has omitted to assert and maintain its right to capture and hold the property of the Southern Confederacy *as public* property—giving to it all the characteristics of *public enemy* property. Thus it was said by Admiral Porter in all his communications to the Navy Department; and thus it has always been claimed by every department of the Government, including the Judiciary.

It is clearly recognized in the Alexander case. (2 Wall. 404.) If, then, this is true, as a matter of fact, I submit that there then remains no longer a doubt of the power of this so-called Confederate Government to acquire property, and if they may

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acquire they may transmit the title. The recognition of this doctrine by no means carries with it an acknowledgment that this power was a political government. A combination of men may exist without the pale of the law, and yet may hold property which they can legally alienate. This is the case of a *usurper*. (Wheat. on Int. Law, p. 51.) All persons may buy and sell except those interdicted by law (Louisiana Code, article 2420); as in the case of a *quasi* corporation, they may buy and sell property though there may be no law for the corporation. The combination in this instance was unlawful, so far as it proposed to resist the laws of the United States and set up an independent Government; but they could acquire title to property, which, as long as they were strong enough to prevent the supremacy of those laws, they could hold or sell, and their vendee, not sympathizing or acting with them in their unlawful purpose, can hold it free from the claim of the United States. If a neutral may lawfully trade with them, why may not a loyal citizen, particularly where the acts do not come within the purview of any of the disabling acts of Congress? If the insurgents forcibly take from such citizen his lawfully-acquired property, he is not forbidden to take it back when he can, or take in *lieu* of it any property they may give him. If he may not voluntarily give them property, or exchange it with them for other property, yet, having been robbed by them, he may lawfully take anything they may give him as a recompense for the robbery. If it was unlawful for the rebels to take their property, then it was not unlawful for Withenbury & Doyle to retake it. If the Government can capture property as public property belonging to the rebel Government, then the authority of that rebel Government to surrender its property to Withenbury & Doyle for property which it had bereft them of, can not be questioned. I do not stop to discuss the question as to whether the rebellion was a civil war, and, the parties engaged in it, belligerents. For the purpose of acquiring and transmitting property, the rebels were and must be regarded, *in law*, as a Government, possessing at least one attribute of a Government, namely, the power to hold the country and subjugate the people in that country, and also their property, to their uses and purposes. For the

time being, nearly four years, they held it with a strong hand against our Government and all its power, military and civil. Their cotton, having been acquired by purchase from these people by the so-called Confederate Government, is held by it by that title of purchase, and I submit, if they could not so acquire it, how can our Government claim to hold it by conquest, or otherwise, as the property of that so-called Government? We can not take from them that which they do not own. As I have said elsewhere, we recognized them as a confederated or belligerent foe, for we treated them as such in many if not all the transactions we had with them. It is true those transactions related only to matters growing out of the war; nevertheless, we did treat them as a belligerent *power*. We did not hang their men as outlaws when we took them prisoners, but we treated them as prisoners of *war*, entitled to all the privileges of soldiers belonging to a *power* with which we were lawfully at war. We made *cartels* with them, which is the act of *two powers at war*. (Wheat. on Int. Law, 440.)

Thus, while we did not recognize them as a *political* power, we did recognize them as a people who had a *head*, an authority with which to treat. Their very formidable warlike array *compelled* us to treat with them as a *power*, a confederation. We could not occupy the territory they held till we won it with our arms.

This court says of this *power*, per Mr. Justice Grier, in 2 Black. 673: "It is no loose, unorganized insurrection, having no defined boundary or possession. It has a boundary marked by *lines of bayonets*, and which can be crossed only by force. South of this line is enemies' territory, because it is *claimed* and *held* in *possession* by an *organized*, hostile, and *belligerent* POWER."

This condition of things existing, *gives* to *the acts* of that *power*, within the territory it holds, such character as will *compel* their recognition as legal facts, more especially where our loyal citizens are concerned.

Wheaton (526 and note) and Halleck (792) concur in the view that not only are private individuals exempt from penalties for acquiescing in a Government *de facto*, which exercises undisputed sway, and when all protection is withdrawn, from necessity or

otherwise, by the previous Government; but it is obvious that some police regulations, and the administration of justice in every country, even during a revolutionary struggle, are essential to prevent anarchy and its attendant consequences. The relation of protection and allegiance, or the reciprocity of right and obligation, must exist in all their force to keep alive, intact, the allegiance of the individual to his Government.

Unless this rule is fully recognized in the case of the Southern rebellion, the wildest confusion will prevail with respect to titles and estates generally, and instead of peace bringing with it that condition of security that will make the people happy and contented, it will inaugurate a disturbing element far more unjust and disgusting to the people than the bloody civil war just silenced by conquest. It will entail upon the loyal the greatest distress and injustice as to their property and rights of property.

If this view is not correct, I am unable to perceive upon what principle of law the captors, as they facetiously style themselves, can hold this cotton as *public property*. It is conceded that to enable them to hold it as *prize* of *war*, being captured on land, it must appear to be *public* enemy property. If it was Withenbury & Doyle's when captured, then the claim must fail, because, by the decision of the Supreme Court, in the Alexander case, it was not a lawful capture, and the libel must be dismissed. It will not be forgotten that the cotton was raised and was owned by Simmons and by Tatum's heirs. The title rested there till some time in the spring of 1863, when certain judicial proceedings took the title out of them and transferred it, through Simmons, to the Confederacy. The agreement to sell was made in December, but Mr. Ray says the judicial proceedings necessary to divest the title of the Tatum heirs and Simmons, were not instituted until the money was paid (see his evidence, Record, p. 88), and A. W. McKee says that the money was not received till some time in the spring of 1863, and not till after he consented to Dr. Simmons going to Richmond for it, and upon that arrangement he did go to Richmond and get it. *After his return*, the judicial proceedings were instituted. Thus, it appears, that the title, at this time and by virtue of these proceedings, was cast upon the Confederacy. Now, soon after it

was captured, McKee, their agent, notoriously recognized and received as such throughout the country, who, under their direction held the cotton and the title papers, agreed to transfer it to Withenbury & Doyle, to compensate them for the damages they sustained for the *forced* service of their boats *impressed* by the rebels.

If the consideration was a valid one, satisfactory to the Confederate authorities, the subsequent act of transfer, made by McKee, vested the title in Withenbury & Doyle. That was in August, 1863 (see A. W. McKee's dep., Record, pp. 69 and 131), and the *evidence* of that sale (the bill of sale), and the delivery of all the other title papers was made in January, 1864.

Neither the Confederate Government, nor any one for it, has denied the validity of this sale and transfer, but, as far as they have spoken, it has been recognized and confirmed. Until they have denied it, it must remain unquestioned, and will be treated in fact and in law as their valid act. Its *bona fides* remain likewise unimpeached. It is proved by McKee (p. 137) that there was coming to Withenbury & Doyle, in the spring or summer of 1863, between eighty and ninety thousand dollars for the *forced* services of these men and their steamboats. This statement is uncontradicted. In fact it is corroborated in general terms by Rhorer, Martin, and Rachal (pp. 50, 55, and 111), wholly disinterested witnesses, and by Withenbury & Doyle (pp. 75 and 83) themselves. The price of cotton per bale, at that time, was not to exceed seventy-five dollars, at which price, it will be seen, the cotton would not pay to Withenbury & Doyle the amount that was at that time admitted to be justly their due (p. 137). I take no note of the claim set up for Le More & Co. They are not at all in the way of the claim I advocate. They have no title, as I think is conclusively shown in the brief filed in No. 107. Withenbury & Doyle's title is the only one that came from the Confederate Government, the *bona fide* owner of the cotton when it was transferred to Withenbury & Doyle. That claimed for Le More & Co., more than two months after Withenbury & Doyle acquired title, came from Kirby Smith, who did not even claim to act for the Confederate Government in his attempt to sell by authority of any kind, but who was a mere usurper of power in the premises. He claims

nothing else. He was a guerrilla or a brigand on a large scale. He failed to get this cotton out of the way of our forces, or away from Simmons, the agent of Withenbury & Doyle, and failed thus to maintain the only title he could set up to it, viz: fraudulent and forcible possession, for he had no authority to control it for any other purpose than that of *protection*, and that related only to the cotton he actually obtained the title papers for from McKee. (See Judge Duncan's deposition, p. 121.) Thus, we find this title resting undisturbed in Withenbury & Doyle, when the gunboats seized it. They found it in possession of Withenbury & Doyle's agent and warehouseman. As to this please note:

First, that Simmons gave a memorandum in writing, in the nature and of the effect of a warehouse receipt, to Dr. Young (McKee's agent), that he would hold that property for the C. S. A., or their assigns. Dr. Young weighed, sampled, took possession of and marked the cotton, and Simmons gave the warehouse receipt. That receipt was the usual, ordinary, well-known receipt given by planters, in the sale of their cotton, in Louisiana. Rachal says that was the *general* and customary receipt (pp. 112, 113, answer to interrogatory 6); that the delivery of that receipt operated, and was universally held, to transfer the title and the possession as fully and completely as could *any* warehouse receipt. He had been a warehouseman and cotton dealer for twenty years in that country. The law of Louisiana must govern in regard to the effect of such a receipt and transaction—and that law is the usage proven by Rachal, Judge Duncan, and other witnesses. (See Judge Duncan's evidence, pp. 122, 123.)

See Louisiana Code, articles 2431, 2443, 2444, 2453.

II.

FORCED TO REMAIN AND FORCED TO SURRENDER THEIR PROPERTY AND RENDER SERVICE.

Thus, then, the title and possession of the C. S. A. given to Withenbury & Doyle, has never been divested, and there the title now remains. When the cotton was taken by the naval forces, it was the property of Withenbury & Doyle, and could not, consequently, be taken as the property of the C. S. A. This is too plain to admit of argument.

I do not stop to examine the effect of Le More & Co.'s attempt to take possession of the cotton. This was manifestly a fraud, having no valid basis in law or fact, as is shown in the argument filed in No. 107.

I might rest here, because it brings the Court to the unavoidable and irresistible point of dismissing the libel, unless they can see enough in the case to justify their making an order of restitution to Withenbury & Doyle. Claiming that that is the proper course to be pursued by the Court, I proceed to inquire whether there are any legal impediments in the way of making such an order?

II. The Court has jurisdiction of the fund and of the parties, and may lawfully make such an order as will place the property in the hands of those entitled to it. I take no note here of the municipal statutes claimed to disable Withenbury and Doyle from holding it; and do not propose to dwell at any great length upon the extraordinary claim of the counsel for the captors, that the general or public law of nations will prevent them from holding it.

1. The statutes do not apply, in the light of the circumstances that surround these parties. They were citizens of Ohio when the war broke out, lawfully engaged in their lawful business, having no sort of residence in Louisiana, commercial or otherwise, but were there only temporarily. Their property was seized by the enemy, and they were not *suffered* to bring it away. It was *impressed*, and so were their persons.

Andrew W. McKee says: "To my knowledge they laid many plans to get their property protected and get themselves into the Federal lines, which, however, was a very difficult matter, owing to the very severe conscript and detective system established by the so-called Confederate States." (See pages 58, 70, 86, 90, 92, 98, 100, 101, 102, 103, 104, 105, 107, 109, 110, 111.)

It was of no consequence that there was a general, notorious, and humane law recognized throughout the civilized world—that these very rebels had themselves passed a law of a similar kind, authorizing persons situated as were Withenbury & Doyle, to leave with their property in a reasonable time after the breaking out of the war.

The stubborn fact is there, that these rebels *would not allow* these men to leave with their boats. The evidence is full of their frequent attempts to escape with their property, and of the surveillance and military watchfulness which dogged them at every step and thwarted their every attempt at escape. They were impressed, and their boats were impressed. The law did not oblige them to come away if they could, and abandon their property, but expressly declares that they might leave *with their property* in a reasonable time after a declaration of war. But if they could not remove their property they might remain there to protect it, and the same was lawful. Any other construction of the rule would be absurd and unjust.

Thus, in Wheaton's International Law, 50, it is laid down that where the *acts* of the *actual* head of a Government *de facto*, in treating for private confiscated property, are held to be valid by the *lawful* sovereign on his restoration, although the acts of him who is considered by the restored sovereign *as a usurper*.

The universally acknowledged rule is, that war does not transfer

to the sovereign a debt due to his enemy, and, therefore, if such debt be not exacted, peace revives the *former* right of the creditor; and this rule does not apply alone to actions. Other things are embraced. Marshall, C. J. (8 Cranch, 124), says that "the modern rule is that *tangible* property, belonging to an enemy, and found in the country at the commencement of the war, ought not to be immediately confiscated. War gives the right to confiscate, but does not itself confiscate the property of an enemy. It does not vest the property in the belligerent Government." Thus, the rights denied Withenbury & Doyle by the Confederates to remove their property nor the declaration of war, did not lawfully deprive them of them; and so of the cotton given them in place and instead of their boats.

In the case of a *foreign* invasion, the acts of the head of the invaders, during the time they hold possession, would be held valid by the true government upon its resumption of authority.

In Vattel, book 3, chap. 16, par. 264, pp. 413, 414, it is said—

"When a subject can neither receive his sovereign's orders nor enjoy his protection, he resumes his natural rights and is to provide for his own safety by any just and honorable means in his power."

Coolidge v. *Inglee*, 13 Mass.

Thus the country people, the inhabitants of villages or defenseless towns, are bound to pay contributions which they have promised, in order to save themselves from pillage. Nay, more, a subject would even have a right to renounce his country, if the enemy being masters of his person, refused to spare his life on any other condition; for, when once the sovereign to which he belongs is unable to protect and defend him, he resumes his natural rights. So a soldier meeting an enemy in a by-place, makes him a prisoner, but promises him his life or liberty on condition of his paying a certain ransom, this agreement is to be respected by the superior.

Vattel, 415.
Vattel, book 3, chap. 10, par. 174, p. 371.

The following is what Puffendorf and Blackstone say on this subject:

"X. But when a person, driving out the lawful prince, seizeth the government, and sets himself up for king, though he be really the usurper of another man's right, what course shall an honest subject take under this difficulty, inasmuch as he seems still to owe allegiance to his rightful sovereign during his life? On which point it appears reasonable to affirm, that things may often come to such an issue as shall make it not only allowable, but good and necessary to obey the ruler in possession, by what means soever the possession was gained, as if the lawful sovereign be reduced to such straits that he can no longer exercise any part of the regal office toward his people. For then, though the commands of the usurper, being destitute of legal power, are not in themselves obligatory, yet it becomes a wise man to consult the welfare of himself and his affairs, to make provision against the future, and, with wariness and caution, to reflect on his present condition, that he may not rashly thrust his life and fortunes into danger, as he would do should he, by vain obstinacy and opposition, draw the usurper's rage upon his own head, without procuring the least advantage either to his country or to the ejected prince. Some are willing to deduce the doctrine from the XIII Chapter of the Epistle to the Romans, where the apostle says we ought to obey (*ou, monon dia ten augen*), not *only for wrath*—as if he should have told us it was not the part of a prudent person to provoke the anger of him who bears the sword by an unnecessary stubbornness; and that, therefore, out of regard to our own safety we should be subject (*Tais Ousais Exousais*) *to the powers which are in being*—that is, which have the present possession. Since, then, a State can not subsist without some government, and since he who actually wears the crown doth, at least in some tolerable measure, maintain the public safety, an honest man, and a lover of his country, ought not, when the posture of affairs requires this proceeding, by an useless resistance, give occasion to farther troubles. But what seems hardest of all to be resolved is, how the subjects can, at the same time, keep up two contrary obligations—one to the lawful prince, now expelled, and the other to the possessor, who hath constrained them to swear allegiance to him, and for the present executes the

regal office. For, how can a man pay fidelity to two together who are bent on mutual destruction? And yet, on the other hand, the covenant made with the usurper by the subjects, and the faith which they have engaged to him, seems utterly unable to take away the rights and pretensions of the lawful sovereign, as the composition which a countryman makes with robbers, to hinder them from wasting his estate, is incapable of extinguishing his landlord's right and property. Grotius' opinion on the case is this, that while the usurper is in possession, the acts of sovereignty *which he exerciseth have a power of obliging, not by virtue of his right (for right he hath none), but because 'tis in the highest degree probable that he who had the first right to the throne had rather, as things now stand, that the commands of him who is thus in possession should hold good, than that, by the ceasing of all laws and justice, the commonwealth should be thrown into utter confusion.* And, indeed, we ought by all means to presume that every prince hath so much humanity as to desire that his subjects should be preserved by any method whatsoever, rather than by striving in vain with their ill-fortunes and unseasonably expressing an affection, without strength to support it, they should give themselves up for a fruitless sacrifice. When the Romans, being themselves in distress, were petitioned by their allies, the Petilini, for relief, their answer was: 'They confessed themselves to be no longer in condition of supporting their distant dependants, and, therefore, desired the petitioners to return home, and, since they had already given the utmost specimen of their fidelity, to consult among themselves for the future how to make the best of their affairs.' There appears nothing, therefore, that can with more probability be affirmed in the point before us than this—that if the lawful prince be brought into such straits as that neither he himself is able to afford his subjects due protection, nor they, on the other hand, able to resist the usurper without their imminent ruin, it must be taken for granted that he hath, for a while, released his subjects from the obligation toward him, till such time as Providence shall open a way to his restoration, so far as is necessary to secure them from destruction and danger. And thus, too, the fealty promised to the usurper seems so far only to be binding as that it shall be a kind of temporary engagement, to expire so soon as the expelled

prince shall recover his dominions, and consisting not so much in any internal necessity laid upon the conscience as in the force of that terror under which they now stand. Grotius, in another case, allows of an external right and property; and we see no reason why there might not as well be admitted some kind of external obligation not affecting the conscience. If we put all these considerations together, we shall find that there is scarce any case in which a private person may, by his own authority, disturb an unjust possessor of the sovereign dignity, especially since experience witnesseth that such conspiracies do commonly exasperate the usurping power to greater violence and oppression."

Puffendorf's Law of Nature and Nations, book 7, chap. 8, sec. 10, pp. 224, 225, Oxford Edition of 1703.

To the same effect Blackstone, book 4, chap. 6, pp. 77, 78 (marginal), lays down the law as follows:

"It is held that a king *de facto*, and not *de jure*, or, in other words, a usurper that hath got possession of the throne, is a king within the meaning of the statute, as there is a temporary allegiance due to him for his administration of the government and temporary protection of the public; and, therefore, treasons committed against Henry VI. were punished under Edward IV., though all the line of Lancaster had previously been declared usurpers by act of Parliament. But the most rightful heir of the crown, or king *de jure*, and not *de facto*, who hath never had plenary possession of the throne, as was the case of the house of York during the three reigns of the line of Lancaster, is not a king within this statute against whom treasons may be committed. And a very sensible writer on the crown-law carries the point of possession so far that he holds that a king out of possession is so far from having any right to our allegiance by any other title which he may set up against the king in being, that we are bound by the duty of our allegiance to resist him. A doctrine which he grounds upon the Statute 11, Henry VII., chap. 1, which is declaratory of the common law, and pronounces all subjects excused from any penalty or forfeiture which do assist and obey a king *de facto*.

"But, in truth, this seems to be confounding all notions of right and wrong, and the consequence would be, that when Cromwell had murdered the elder Charles and usurped the power (though not the name) of king, the people were bound in duty to hinder the son's restoration; and were the king of Poland or Morocco to invade this kingdom, and by any means to get possession of the crown (a term, by the way, of very loose and indistinct signification), the subject would be bound by his allegiance to fight for his natural prince to-day, and by the same duty of allegiance to fight against him to-morrow. The true distinction seems to be, that the statute of Henry the Seventh does by no means command any opposition to a king *de jure*, but excuses the obedience paid to a king *de facto*. When, therefore, a usurper is in possession, the subject is *excused* and *justified* in obeying and giving him assistance; otherwise, under a usurpation, no man could be safe, if the lawful prince had a right to hang him for obedience to the powers in being, as the usurper would certainly do for disobedience. Nay, further, as the mass of people are imperfect judges of title, of which, in all cases, possession is *prima facie* evidence, the law compels no man to yield obedience to that prince whose right is, by want of possession, rendered uncertain and disputable, till Providence shall think fit to interpose in his favor and decide the ambiguous claim; and, therefore, till he is entitled to such allegiance by possession, no treason can be committed against him. Lastly, a king who has resigned his crown, such resignation being admitted and ratified in Parliament, is, according to Sir Matthew Hale, no longer the object of treason. And the same reason holds in case a king abdicates the government, or, by actions subversive of the constitution, virtually renounces the authority which he claims by that very constitution; since, as was formerly observed, when the fact of abdication is once established and determined by the proper judges, the consequence necessarily follows that the throne is thereby vacant, and he is no longer king."

The time of leaving the enemy's country was when they *could* do it peaceably and safely, which might be at the time war was declared, or when peace returned. It is a pure question of fact. They can not, by any forcible act of the enemy, be deprived of the

benefits of this rule. If the fact that they were loyal citizens of the United States did not, the doctrine of *post liminii* did fully protect them and their property, and justify their conduct. If, when peace comes, and the obstacles thrown in their way by the enemy are removed, and the property they had when war broke out is still extant, they may resume its possession and enjoyment as before. This right to remove it is revived, and at once inures to them the moment they put themselves in motion to leave the country. (3 Rob. 17; 8 Cranch, 280.) This is undoubtedly correct. I am unable to see why the same rule does not apply to the property which they hold as the representative of that which the enemy deprived them of by force. If, then, the enemy could not lawfully confiscate their property, how can their own Government do it after it is released from the enemy's forcible detention? The rule laid down by all writers on international law, and adopted by Chief Justice Marshall (8 Cranch, 124), is that the sovereign can detain neither the *person* nor the *property* of those subjects of the enemy who are in his dominions at the time of the declaration of war.

1 Duer, Insurance, 561, 563.
3 Phil. Int. Law, sec. 75: cases of *constrained* residences.
The Diana, 5 Rob. 60.
The Catharina, 5 Rob. 141.
11 How. 60: evidently in point, on constrained residence.
The Ocean, 5 Rob. 91

Here the right of *property* is inseparable from the right of the citizens to leave. If the one is detained, the other is detained likewise. The citizen is not bound to leave his property, if his presence is *necessary* to protect it. While he may not lawfully go from our lines into the enemy's to secure and bring away his property, nevertheless, being there himself lawfully when war breaks out, he may lawfully remain until he is permitted to leave with his property. The reason which would prohibit him from doing the one thing does not apply to the other. But that is not this case. Here the prohibition applied to both their persons and their property. Being well-known Red River men, of so many years stand-

ing, they could not travel far in that country without being recognized and stopped. Besides, their movements were watched, and every attempt they made was frustrated by the military. Suspected of being Union men, they had not the unrestrained liberty of rebels to go and come when they pleased.

But it is claimed that the property in this case is stamped with disability, whatever may have been the political status of the owners. *It was* engaged in *illicit traffic*, and that paralyzed it.

To this, I answer, that if Withenbury & Doyle could have brought their steamboats away, as soon as the coercive measures, which the enemy used to prevent them, were removed, then they could bring away the representative of those boats under the same rule. If there was no illegal traffic in the case of the acquisition of the cotton, it falls within the rules stated and enforced in *Hallett* v. *Jenks*, 3 Cranch, 210.

That was an action upon a policy of insurance, and the only question to be decided was, whether the risk insured was illegal under the Act of Congress (non-intercourse act) of June 13, 1798.

The sloop Nancy was built and owned in Rhode Island by citizens of the United States. She sailed from Newport, in that State, on December 12, 1798, on her voyage to Havana. That in the course of her voyage she was compelled, being in distress, to put into Cape Francois, on the island of Hispaniola, a country in the possession of France, where she arrived on January 5, 1799; that the captain and supercargo of the sloop were part owners of the cargo, and two of the plaintiffs in this suit; that the cargo was landed to repair the vessel; that the public officer, acting under the French Government there, took from them nearly all the provisions aboard the sloop, and the captain and supercargo were *permitted* to sell, and did *sell* the remainder to different persons there; that the captain and supercargo made a *contract* with the public officer, by which they *were to be paid* for the provisions in thirty days, but the payment was not made; that with the proceeds of the remaining part of the cargo they purchased the whole of the cargo which was on board at the time of the capture, and, also, seventeen hogsheads of sugar, which they sent home to New York as freight; they were *forbidden* from taking on their landed cargo,

or from taking away any specie, by reason whereof they were *compelled* to sell the same and *take the produce of the country in payment.* The sloop sailed on February 23, 1799, with American papers, but was captured by a British frigate and carried into the island of Tortola, libeled as well for being the property of the enemies of Great Britain as for being the property of American citizens trading contrary to the laws of the United States.

Chief Justice Marshall decided this case. He says: "It is contended by the counsel for the defendant that the circumstances, stated in the special verdict (same as set forth above) do not show an absolute necessity for the trading therein described. And it is said the plaintiff might have abandoned the property and sought redress of this Government; and that it was his duty to do so rather than violate the laws of his country. But the Court is of the opinion that the act of Congress did not impose such terms upon a person who was *forced* by stress of weather to enter a French port and land his cargo, and was *prevented* by the public officer of that port to relade and carry it away." * *

"The terms of the act of Congress seem to imply an *intentional* offense on the part of the owners."

It was said in the course of the oral argument below, that the case of *Hallett* v. *Jenks* was not in point, because it did not grow out of a transaction *during war.* I then replied that that did not make any difference, as the principle decided was applicable to all cases of forced trading with the enemy. Chief Justice Marshall himself meets and disposes of this objection on page 219 of that case. He says:

"Even if an actual and general war had existed between this country and France, and the plaintiff had been driven into a French port, a part of his cargo seized, and he had been permitted by the officer of the port to sell the residue and purchase a new cargo, I am of opinion that it would not have been deemed such a traffic with the enemy as would vitiate the policy upon such new cargo."

This case is also reported in 1 Caine's N. Y. Rep. 64, and in 2 Caine's Cases in Error, 43.

After reciting the facts, as in 3 Cranch, the Court say:

"These acts were acts of *necessity* and *coercion*, and the law of

Congress which suspended the commercial intercourse with France and her dependencies, can not naturally be construed to apply to a case of this description. Its object was to prevent an *intentional* or *voluntary* traffic, and not to compel a sacrifice of property, or inflict a penalty in cases of distress or necessity. That would be a construction excessively severe, and contrary to the spirit and intent of the act."

By the law of nations and the municipal law, all commercial intercourse or trading with the enemy during war is condemned. No title can be acquired by any such proceedings, and all such property, if captured, is condemned for that reason. The enemy can give no title, and our people can take none. The exception to the general rule is the case of *forced* trading, like that in 3 Cranch, 210, *Hallett* v. *Jenks*, recognized and expressly adopted by Mr. Pinckney in 8 Cranch, 158, in which he takes the clearest distinction between *voluntary* and *forced* trading. There the title given to the American citizen by the enemy was recognized and sustained. The Supreme Court seems to have been well satisfied with the explicit and unambiguous ruling in this case, for I find nowhere any dissent from it.

Bromley v. *Hesseltine*, 1 Camp. 75.

This was an action of assumpsit on a policy of insurance on goods on board the Danish ship Gherard, at and from Hull to Messina. The declaration counted the interest to be in Joseph Chimin and Peter Dilla, Longa & Co., subjects of the King of Tuscany. Plea of the general issue.

The ship was captured on her voyage and carried into Algiers, where her cargo was condemned for want of certificate of neutrality.

The defense first attempted was, that the goods were destined, not for Messina, but for Leghorn; and that as Leghorn had been some time before permanently occupied by the French troops, an insurance on such a voyage by an English subject was illegal and void.

Lord Ellenborough: "I don't know that merely because an alien happens to be resident in an enemy's country, goods to be delivered for him at a friendly or neutral port are on that account

uninsurable. Suppose a British merchant to be entrapped and confined in an enemy's country, it can scarcely be said that all the trade he may still carry on is in aid of the king's enemies, illegal and incapable of being insured. It is not illicit trading with the enemy to turn your assets into the products of the enemy's country, and bring them away from that country to your own."

This case was the suit of plaintiff against an insurance company for goods shipped at Rotterdam to Hull. The ship was captured, and the goods with it by the French, and the goods and freight lost. General issue non assumpsit.

The goods were sixty casks of madder, purchased at Rotterdam. *When the goods were purchased, and when they were shipped and captured, and when the insurance was made, open hostilities had commenced and then existed between Great Britain and the persons exercising the power of the Government of the United States.* The defense was that the purchase of the madder was *a trading with the enemy.*

The Court held that it was not such illicit trading.

Heath, J., said it must be remembered that a man can not always remit his goods and effects to another country in specie. He must convert them into such goods as will be merchandizable in the place to which he wishes to remit them.

Bell and others v. *Gilson*, 1 Bos. & Pull. 345.

This doctrine was recognized in Wheat. Int. Law, p. 51:

"Where the price or equivalent of the property sold or exchanged has accrued to the actual use and profit of the State, the transfer may be confirmed, and the original proprietors indemnified out of the public treasury."

ACT OF JULY 17, 1862.

But it may be claimed that Simmons was disqualified to sell the cotton by reason of his political status, in the light of the Act of July 17, 1862. Referring to the *fact* that the title *actually* came from the judicial proceedings carried on between Tatum's heirs and Simmons, until which time it was in those heirs and Simmons (see Mr. Ray's evidence), so that it was a *judicial* title that the Con-

federate States acquired, I have to say that, if that were not so, it would be a difficult task to show that this statute helps the claim of the Government at all. It has no sort of application, and no right can be eked out of it. This act fails to apply to Simmons.

1. Simmons was a citizen of Louisiana, residing at a point where it was impossible for this law or the President's proclamation to reach him. The authorities of the United States neither could promulgate it there nor enforce it there. It was morally and physically impossible to do it. Hence, it could not be claimed to be operative upon him positively or constructively.

Within the territory which acknowledges the supremacy of our laws, no notice of their actual existence and operation is necessary; but beyond those limits, some sort of notice is necessary to make them binding. "Necessity or convention or power has given them a legal ubiquity co-extensive with the legislative power of the Government that enacts them."

The Mary and Susan, 1 Wheat. 58.

"Unquestionably the same operation might, *by law*, have been given to the instructions emanating from the President; but that has not been done; on the contrary, the clause itself which vests the power in the Executive holds out the idea of the *necessity of notice*."

The Mary and Susan, 1 Wheat. 58.
2 U. S. Statutes at Large, Prize Act, sec. 8, p. 761.

Legislation of any country is territorial.

It is not easy to conceive a power to execute a municipal law, or enforce *obedience* to that law, without the circle in which that law operates. The power to seize for an infraction of those laws, on demand from the sovereign, must be exercised, it would seem, within those limits which circumscribe the sovereign power.

Rose v. *Himely*, 4 Cranch, 279.

2. The act is retroactive in its terms and effect. It is pointed at those who, when it is passed, *are* engaged in armed rebellion, or

have given and are *then* giving aid, and are then abetting rebellion. There is no proof that Simmons was *then* doing any of these things. Not *then* being engaged in armed rebellion, and not *then* being engaged in giving aid, or abetting the rebellion, the act and the proclamation could not apply to him; for he was not doing anything which he could be commanded to cease from doing. To make it apply to him, he must have been at the time engaged in some of the unlawful acts named in the law. The act being one against treason, and providing for the punishment of those engaged in committing treason, before forfeitures can be worked out under it, it must appear by the testimony of at least two witnesses that the party has committed one or more of the acts complained of; he must have been engaged in armed rebellion, or he must have aided or abetted the rebellion, prior to the passage of the act of Congress or the issue of the President's proclamation, and be still engaged in the act when the bill was passed and the President's proclamation took effect. There is no pretense that there is such testimony.

3. To make the act effective for any purpose, it must appear that Simmons had notice of it and the President's proclamation. Under the circumstances which surrounded him, it can not be claimed that he had constructive notice as if he were within our lines where our laws could be promulgated and enforced by our own officers. There is no claim that he had such notice. On the contrary, he testifies he had none, and the proof is full that the act was not published and known in all that country where he resided for some time after he made the sale to the Confederate Government.

4. But suppose I am wrong in this. Then I claim that the act does not in itself impair the title of claimants. The act does not *confiscate* the property *ipso facto*, but simply declares that it shall be *liable* to seizure "as aforesaid." These words apply to provisions of the first part of the fifth section, which declares that it shall be the duty of the President to seize. The seventh section points out, after a seizure has been made, how the property shall be proceeded against, and the nature of the evidence necessary to authorize the condemnation. There is and can be no forfeiture until there is a

judgment of condemnation. But in this case there has been no seizure, and no proceedings of any kind to condemn the property, as the property of Simmons. But those that have been instituted have been instituted to condemn the property as the property of the Confederate Government, and it was seized *as such*, and the charge is that it is prize of war, not that it is forfeited under the act.

The rule being that war is not an absolute confiscation of the property of belligerents (8 Cranch, 110), but simply confers the right of confiscation, a forbearance to seize and confiscate during war, although authorized by statute, the right to do it ceases with the return of peace. So Congress thought, evidently, when they passed that act, for they define the object of it to be the "speedy termination of the present rebellion." They declare, in the fifth section, that to insure the speedy termination of the present rebellion, it shall be the duty of the President, etc., to cause the seizure of all the estates, etc., of the persons hereinafter named, etc. Thus this wholesale seizure of property is to be made to suppress the rebellion the more speedily, that is to say, as one of the means to compel rebels to lay down their arms their property shall be taken from them. Now, this property not having been taken as the property of Simmons during the existence of the rebellion, but having been seized as the property of the public enemy, how can it now be claimed that the United States had a title to it because of Simmons' supposed rebellious conduct prior to his sale of it to the Confederacy? I apprehend that no such claim can be maintained.

But these claimants were then and have always continued loyal citizens of the United States. As such, they lost none of their rights by residing within the rebel States. This Court, in *The Peterhoff*, 5 Wall. 60, has held that "citizens of the United States, faithful to the Union, who resided in the rebel States at any time during the civil war, but who during it escaped from these States, and have subsequently resided in the loyal States, or in neutral countries, lost no rights as citizens, by reason of temporary or constrained residence in the rebellious portion of the country," so that, if, while they were in that country under con-

straint, they had no rights as citizens which they could then assert, the moment they come within the loyal States their rights of citizenship revived, and became active and effective, not the least of which was their rights of property.

A statutory forfeiture, not enforced, is an inchoate right—an inchoate operation of a municipal forfeiture. Judge Story calls it quite a novelty.

Grist v. *Mont.*, 1 Gall. 312. *The Rapid.*

The general rule is, that the property of one charged with the commission of a crime is not *forfeited* to the United States until, by the judgment of a court, the crime is ascertained and adjudged. Hence, until the Government has moved in the direction of forfeiting the property, no right attaches to the property. In the hands of an innocent purchaser for value, the right of the Government no longer exists to confiscate the property.

United States v. *Grundy*, 3 Cranch, 337.

This is the rule where the crime must be committed by the owner before the property is *seized* or *forfeited.* That is, where the *person* and not the *property* commits the crime.

3 Cranch, 337, note *a*, 355.
5 Bac. 517.

Where it is held that title by forfeiture of personal property begins with the suit, and has no relation back.

Kitchen, 82.
1 Gall. 192.

A purchaser of goods which have become forfeited to the United States will not purge the forfeiture where the purchase has been under a full knowledge of the facts, or of such facts as were sufficient to put the party on inquiry.

The Plowboy, Gall. 41.
The May, 1 Gall. 192.

But Congress has, in terms, given the interpretation to this act. It confines the operation of the statute, as to property, to the *person* who may commit the crime. The sixth section, the only one claimed to be applicable to this case, provides that, "If any *person*, etc., shall not cease to aid, etc., all the *estate*, etc., shall be liable to seizure as aforesaid," etc.; that is to say, that "it shall be the duty of the President to cause the seizure," etc. Then the sixth section proceeds to declare "that all sales," etc., after sixty days from the date of the warning of the President's proclamation shall be null and void; and then proceeds, "and it shall be a sufficient bar to any suit brought by *such* person for the possession or the use of such property, or any of it, to allege and prove that he is one of the persons described in this section." Now, it must be obvious that Congress did not contemplate following the property beyond "such person" as might be guilty of the crime charged. It was to be taken from him, in addition to the penalty inflicted by the second section, as a further punishment for his crime. Plainly, Congress did not intend to apply the forfeiture to property to which "such person" had no title when it was seized. It would be impossible to enumerate the number and extent of the instances in which the rule claimed, if applied, would work mischief to the property in the late rebel States. It must not be lost sight of that, during all these four years of bloody war, the people there have gone on trading among themselves, as was their wont before the war, and the usual exchanges of property by sale and trading have never ceased. Aside from the strict legal view, it becomes a question of large consequence, in view of the influence it is sure to exert over so much and such large interests. It would break up the peace of society and disturb the people in the quiet enjoyment of their property, and throw them into a worse state of anarchy and confusion than that from which they have just been delivered.

ACT OF JULY 13, 1861.

But it will be claimed that if this property is not condemnable by the law of nations or the law of war, nor yet by this statute of 1862, that it is condemnable by the municipal law, and the

statute of July 13, 1861, will be relied upon. Without admitting the doctrine that the property of citizens of the United States can be captured as prize of war by our own vessels, within the jurisdiction of the United States, either by the authority of the law of nations or the statute laws of Congress, or that it can be condemned or forfeited by any law of Congress solely because it may be the result of a trade between citizens of the United States within the territorial limits of the United States, I do not propose to discuss that question here. It is not necessary to the intelligent consideration of this case: first, because the law of nations does not apply; and secondly, none of the statutes in anywise supervene. Now, the Court below relied upon the Act of July 13, 1861, as controlling this case, and decided that Withenbury & Doyle came within its operation as having been engaged in illicit trading. A moment's examination of that statute will show the error of that conclusion.

The Act of July 13, 1861, covers no such case as this. The fifth section provides that after the President issues his proclamation, "thereupon all commercial intercourse by and between the same and the citizens thereof (in the States and parts of States in rebellion) and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue." This prohibition is very general, and applies to all the citizens of the United States wherever residing, but the penalty which follows is limited in its terms to the property coming *from* such insurrectionary State *into* the other parts of the United States, and that may *proceed* to such State. The property to come within the law must be *moved* one way or the other, *after* the President's proclamation is made operative. The language is: "And all goods and chattels, wares and merchandise, coming *from* said State or section into the other parts of the United States, and all proceeding *to* such State or section by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or sections, be forfeited to the United States." The property must be caught in the predicament named before it falls within the operation of this statute. Now, there was in this case no *moving* of goods and chattels, wares

and merchandise one way or the other, in any direction prohibited, *after* the passage of the act, or *after* the President's proclamation. The steamboat property was in the insurrectionary State of Louisiana when the war broke out, and never left the enemy's lines, and the cotton given the claimants for their steamboats was raised there and there left till it was moved by the gunboats. The claim of the Government in this connection is, not because it was so moved in violation of this section of the law, but because Withenbury & Doyle, being citizens of Ohio, could not have any commercial intercourse with the people in the insurrectionary State of Louisiana. This act, being one directed against the property of citizens of the United States, not captured *on* the high seas, and not prizes of war, in any sense, is highly penal and must be construed strictly, more especially since it proposes to deprive them of their property for a crime of which they have not been convicted. (5th and 6th Articles of Amendment to the Constitution United States).

SUPREME COURT DEFINE ILLICIT TRADING.

So far as I have been able to find, this Court has never decided a case of illicit trading, where the party offending did not *voluntarily* proceed from the United States to the enemy country to trade, or for the purpose of bringing away his property, then in that country. But the Court has refused to condemn the property for the mere act of illicit intercourse. In the case of *The Thomas Gibbons*, 8 Cranch, 421, the Court say: "The argument proceeds upon the supposition that by the mere act of illicit intercourse, the property of an American citizen becomes divested *ipso facto*, but in point of law this is not the operation of the rule. The property is only *liable* to be considered as enemy property, or as adhering to the enemy, if rightfully captured during the voyage." That is, if found in the predicament of offending.

The right of capture is entirely derived from the law; it is a limited right. *Brown* v. *The United States*, 8 Cranch, 122.

The cases of *The Sally*, 8 Cranch, 382, and *The Rapid*, Ib. 155, decide nothing adverse to these views. In the first case, the vessels *voluntarily* left the United States *for* a British port in violation of both general and municipal law, and the other was a like *voluntary* trading with the enemy; that is, they *went from our lines* to the enemy's without warrant of law, and traded with him.

Justice Thompson, in the first case, distinguishes these acts from those of forced trading, and the right to leave the enemy's country with his property on the breaking out of war.

The case of *The Aurora*, Ib. 203, was the case of an unlawful use of a British license to trade, and the Court go no further than to condemn it as illegal, and not justified by the laws of war.

DID THEY REMAIN LOYAL TO THEIR GOVERNMENT?

I point to all the proof taken in this behalf, and aver that there is not one word in the record impeaching their good faith in any respect. They did no more service for the Confederates than they were compelled to do. They did not take up arms for the rebels, they did not take their oath of allegiance, they did no military service; but on the contrary, did everything they could to avoid it, and sought the first opportunity to serve their own Government in any way and every way in their power. They were beyond the reach and protection of our laws, and were compelled to acknowledge and give obedienee to the rebel laws. They did not go *from* our lines *into* and seek the rebel lines to trade with the enemy. They did not leave our lines and go into the enemy's. They did not voluntarily render them aid and abet the rebellion. They did not trade with the enemy at all. This cotton was given *to them for the forced services of their boats*, and not on any contract or

agreement to pay as an inducement to render the services. Both McKee and Withenbury declare this fact, and that remains uncontradicted. No one question it. *The cotton thus became the representative of their boats. Instead of their boats they have the cotton.* A moment's examination of the well-adjudicated authorities will show that this position and its results are sustained by the clearest principles of law and justice.

After the most careful search I have been unable to find a single case that impairs the integrity of these views. The cases cited by counsel *at bar* in the court below, to establish that this was illicit trading, fail to approximate the point. The one in 2 Christopher Robinson, 82, falls far short of the mark and is decided upon the peculiar facts of the case, which are wholly different from these. I invite the Court to read it carefully, as well as *The Aurora*, in 8 Cranch, 211, likewise cited by counsel for the same purpose. These citations are conspicuous errors on the part of counsel. Thus the general law and the statute law do not control Withenbury & Doyle's claim.

They are owners of this property for a valuable and a valid consideration—3 Cranch, 210, *Hallet & Brown* v. *Jenks*, decided by this Court, is very much in point. That was a case of forced trading with the enemy, and was especially validated.

The Indian Chief, 3 Rob. Eng. Ad. 17.
The Diana, 5 Rob. 60.
4 Rob. 254; 5 Rob. 141; 11 Howard, 60.
The Ocean, 5 Rob. 91.

But the elementary books are full to this point, and there is no room to doubt their entire applicability to this case.

If the Court believe that Withenbury & Doyle acted in good faith, and were earnestly striving to save their property, the earnings of years, and that they were not there for the purpose of aiding the enemy, then the law points out the disposition and the only disposition which the Court can make of this property.

III.

THEIR INTENTIONS.

They did nothing to aid the enemy; and what they did do, was not *intended* to aid him, but was for a very different purpose. So that if the *mode* of acquiring the property is to be called a contract or agreement, still, to disable it, it lacks the essential element of *intention* on the part of Withenbury & Doyle to aid the enemy.

To taint a contract with fraud, it must appear affirmatively that the purchaser *intended* to violate some law when he made the contract. The *intent* must appear and enter into the contract, and form its principal ingredient. The fraud will not be presumed. It must be clearly proven.

If a promise be entirely disconnected with the illegal act, and is founded on a new consideration, it is not affected by the illegal act, although it was known to the party to whom the promise was made, and although he was the contriver and conductor of the illegal act.

Armstrong v. *Toler*, 11 Wheat. 258.
Hilliard on Sales, 376.
1 Phil. Ins. 133.
Armfield v. *Tate*, 7 Ired. 238.

A person who sells goods, knowing that the purchaser intends to apply them in an illegal trade, is nevertheless entitled to recover the price, if he yields no other aid to the illegal transaction than

selling the goods, and obtaining permits for their delivery to the agent of the purchaser.

Hodgson, et al. v. *Temple*, 5 Taun. 181.

The knowledge of the purpose of the vendee to commit a fraud does not vitiate the transaction. The vendor must not only know the act, but he must actually help the fraud. It must be his *intent* to help commit it.

Holman v. *Johnson*, Cowp. 341.

Lord Mansfield said in the case cited from 5th Taunton, that "the mere selling goods, knowing that the buyer will make an illegal use of them, is not sufficient to deprive the vendor of his right of payment." The same rule is laid down by the Supreme Court of Massachusetts in *Dater* v. *Earl*, 3 Gray, 482.

So likewise in *Coolidge* v. *Inglee*, 13 Mass. 26. It is held that where goods are bought from an enemy, even in his own territory, by a citizen of the United States, the sale is valid, and the price may be recovered, although the act might be a misdemeanor, and the property liable as a prize.

See also *Raudon* v. *Toby*, 11 How. 493.

Now, in this case, Withenbury & Doyle did not intend to aid the rebellion when they took this cotton. They *paid* no consideration for it. It was not the result of a trade, or of a contract, or of services voluntarily rendered. Their own property was forcibly used and taken from them, with no precedent agreement or understanding that they were to receive this or any other cotton for their boats or for their services. The act of receiving the cotton was not calculated to aid the rebellion, but the reverse is true. It was taking away from the rebels one of their sources of revenue to carry on the war.

Daubriz v. *Morehead*, 6 Taun. 332.
Roberts v. *Walker*, 1 Maule & Sel. 533.
Antoina v. *Morehead*, 6 Taun. 237.
1 Marshall (C. P.) R. 561 (same as last case).

IV.

WHAT THEY DID TO KEEP OUT OF THE REBEL MILITARY SERVICE.

The efforts of Withenbury & Doyle to keep out of the rebel military service were generously seconded by A. W. McKee, whose official position in the Confederate service enabled him to serve them. After they lost their boats and barges, he gave them employment to enable them to support themselves, and in every way aided them to keep from being conscripted. As one of the means to avoid it, McKee advised them to accept a contract to transport cotton from Red River to the Sabine River. Once having made the contract, they were free from the conscripting officers. (See page 81 for order of rebel General Taylor exempting persons of conscript age from conscription who made contracts with McKee to remove cotton.) He says (p. 68, Record, 112): "In the latter part of August, 1863, W. W. Withenbury and R. W. Doyle came to me jointly, and applied to me for payment of their accounts for past services *required* from their steamboats Homer and Vigo, and *to ask my advice as to what they should do for the future to avoid military service*, and save for themselves the labor of years. I promptly informed them that I was aware that their names were upon the list of the enrolling officer; that they were liable at any hour to conscription, but that if they would accept a contract to transport cotton from the Red to the Sabine River, I would pay them in cotton a liberal price, and in addition would pay them all back dues coming to them from the so-called Confederate States." The better to secure them against conscription, and at the same

time direct attention from himself as the publicly-accredited friend of Withenbury & Doyle [the rebels suspected and charged him with favoring them (p. 72, answer to the 10th int.), and he was subsequently tried by a military court on a charge of treason, for harboring and assisting in their escape (see p. 72)], he says on p. 71, near the bottom: "I advised Withenbury & Doyle, after our conversation in answer to No. 4 (the same as above extracted), to make a written proposition agreeably to our conversation to Lieutenant Colonel Broadwell, who would most likely agree to it. * * If I could thus make it appear the doings of Lieutenant Colonel Broadwell, it would save me from increased censure and blame on account of Withenbury & Doyle." Having in his possession, at that very time, the order of the rebel General Dick Taylor (p. 81), dated July 31, 1863, providing for exempting persons who might contract to remove cotton, etc., and knowing that General Kirby Smith was usurping, and would further usurp the authority to control this cotton, and likewise dispute his (McKee's) authority, he saw that an important point would be gained in favor of his friends, if he could get this indorsement, whether they ever moved the cotton or not. Indeed, it is obvious that what Withenbury & Doyle wanted, and what McKee was seeking to do for them, was to keep them free from conscription. He had, up to this time, succeeded in so doing by various means which he was enabled to make available. He knew all along "that they were opposed to secession, * * and were from first to last strong Union men" (p. 70, near the top), and finally assisted in their escape from conscription on all occasions (p. 70). Again (same page), he says: "To my knowledge they laid many plans to get their property protected, and get themselves into the Federal lines, which, however, was a very difficult matter, owing to the very severe conscript and detective system," etc. With this knowledge, so vividly described, McKee stood by his two Union friends, from the commencement of the war to the time General Banks appeared in Alexandria, in 1864. He had witnessed the unjust and oppressive impressment of their boats; he knew with what tyrannical vigilance they and their property were guarded; he saw their property ruined, and the best days of their lives wasted in the midst of mil-

itary oppression, alike hateful to them, and unjust to their country. His sympathies were aroused, and he set about trying to protect them. In the spring of 1863 (see p. 137), he ascertained that for services rendered by them in 1861 and 1862, there was due Withenbury & Doyle between eighty and ninety thousand dollars, and in August, 1863, he laid away, to be handed to them, vouchers for cotton, rated at fifty dollars per bale, for *their services*. See p. 67, where he says, "the price for the cotton sold Withenbury & Doyle, was bale for bale for all transported under their contract, fifty dollars per bale for amount *due upon previous services*." And on p. 81, Withenbury, in answer to interrogatory 14, "How much, if any, cotton did you realize on the contract referred to by Major McKee, and was it any of the Simmons' cotton?" answers: "*I never got any cotton on the contract referred to by McKee.*" And on p. 80, he says, that the consideration for the 935 bales Simmons' cotton, "was in part payment for the services of our steamboats and barges rendered some time before the cotton was given to us." * * "It was a voluntary contribution, or act of justice, not a payment in pursuance of any contract with the Confederate Government, or any agreement before the services were rendered by us or our boats." And on p. 84, in answer to interrogatory 4, R. W. Doyle says, in speaking of the consideration for the cotton: "We received it in payment for services *with our boats* for the so-called Confederate States, which we were *forced* to perform by military power, and for other services we had to perform before we could receive our pay *in cotton*."

Thus it appears that McKee made the settlement with Withenbury & Doyle as early as the *spring of* 1863, and appropriated this cotton (935 bales with others) to pay them for these *impressed* services, and in August, 1863, before he went to Houston, he withdrew the evidences of title of this very lot of cotton from the office, and put them in his private drawer for Withenbury & Doyle. These papers covered 1745 bales, viz: 935 bales Simmons & Tatum; 418 bales Hewitt's, at Miller's Bluff; and 392 bales J. D. Allen. See A. W. McKee's deposition, p. 69, near the top, for the description of the Hewitt lot, and the bill of sale appended to Rhorer's deposition, p. 54, for the Simmons & Tatum, and the

Allen lots. At fifty dollars per bale, these three lots would amount to $87,250, scarcely enough to satisfy Withenbury & Doyle's claim. As ascertained by the settlement made by McKee in the spring of 1863, that sum was between eighty and ninety thousand dollars; and yet they did not get either the Allen or the Hewitt lot, and must look to the Simmons & Tatum lot for their pay. This statement of facts shows conclusively that these lots of cotton were not given them on any other account than the sum due for their boats. Certainly not on account of the transportation contract, for that was not entered into until some time near the end of August, or 1st of September, 1863 (see McKee's deposition, p. 68, middle of the page, and the bottom of p. 71). Besides, Lieutenant Colonel Broadwell, who was present and made the contract, and who, according to McKee, suggested that Withenbury & Doyle should secure and take the Simmons cotton (p. 71, bottom), seems to have forgotten that it was ever designed for them, because, in his extraordinary certificate, appended to Jules Le More's deposition, he says that this cotton was the *bona fide* property of Messrs. G. A. Le More & Co. (See record in No. 107, p. 107.) From all this it appears: 1st. That Withenbury & Doyle did all things necessary to keep out of the rebel army. 2nd. That McKee was early their friend, and used his official position to keep them free from rebel conscription. 3d. That one and the most effective means to that end, was the giving them employment after they lost their boats, and thus putting them out of the way of conscription. 4th. Giving them a contract to remove rebel cotton, so as to bring them within the exemption proviso of General Taylor's order. 5th. Inducing the military authorities to ratify that contract, thus giving the semblance of approval of both the civil and military to their freedom from conscription. 6th. The cotton in controversy was not sold to these claimants on account of services rendered under that contract, but was given to them on account of the settlement made in the spring of 1863, for the use of their boats, etc.

It is by no means certain that Withenbury & Doyle did anything under the transportation contract; but if they did, it is very clear that they got no cotton or other compensation for it. Withenbury says they got no cotton on that contract (p. 81), so that

if that contract was illegal, it can form no consideration in this case, because the property in controversy was not the fruit of it, nor has it any connection with it. The consideration for this cotton was legal and valid; and standing by itself, it must be held free from the disabilities that might have attached to any property flowing out of that contract. Not being the result of any unlawful traffic, the title to this cotton must be upheld in these claimants, even if the transportation contract has no legal bottom. But that contract was valid. It was not unlawful for Withenbury & Doyle to make it, if it was *necessary* to keep them out of the rebel army, or if it was necessary to their sustenance and support, or that of their families, or if they did it, being in military duress, because they could not well help themselves. As long as they did not do it *for the purpose* of aiding the enemy, the contract is free from the legal paralysis which would otherwise befall it. These claimants did not ask for the contract. When it was proposed that they should make it, *in order that they might keep out of the way of the conscription officers*, they hesitated and took time to consider. It was not a commercial adventure, promising a reward in the way of profits. They knew that General Banks was soon to return, and would overrun that country. Withenbury had promised to join him on his return and give him such aid and counsel as he could. He was to be back in forty days. That was in the spring of 1863, and his coming was hourly looked for by them. To make this contract was to save them from military conscription, and a refusal to make it was almost certain to result in conscription. With the knowledge they had of Bank's movements, they felt it was better that they should accept this proposition and remain about Alexandria, and be ready to meet the United States forces, than to be dragged off with the rebel army to some distant point in the interior. Accordingly they accepted McKee's proposition, and thus kept out of the rebel army. The motive was legitimate, and they might well make the contract. As I have argued, and I hope demonstrated, in another part of this brief, on principle and authority, there must be on the part of the parties an *intent* to do the wrong complained of. Here, there must have been *a purpose* to aid the enemy. Now, if it appears, as it clearly does, that there was no such purpose, then the contract was

legal, and no crime attaches to Withenbury & Doyle for entering into it and carrying it out. If it appears (as it does not), that it did aid the enemy, nevertheless the act would be valid, since that was not the *intent* of Withenbury & Doyle when they made it. They say so, and so does A. W. McKee, and that fact is in no wise impaired by the statement of any other witness. In fact, the entire circumstances of the case uphold and support it.

V.

GOOD FAITH OF THE GOVERNMENT.

But Withenbury and Doyle are entitled to the restitution of this property, even if the claim of the captors is correct, that Withenbury & Doyle were engaged in illicit trading, because the Government, through its duly empowered authorities, stipulated and agreed to afford this property protection for them for the services they had rendered and were to render to the Government, and which in pursuance to this agreement they did render in good faith.

The military and naval commanders, when in the field operating their armies and navies, are clothed with all the powers of their commander-in-chief to the end that their commands are ordered to accomplish.

> Halleck, p. 677, sec. 3, where this doctrine is distinctly recognized and stated.

Thus, if the President, as such commander-in-chief, could employ one of the enemy to assist him for a consideration, whether that is money or freedom, from the consequences of violating the law, and

bind his Government thereby, so his commanders, charged with the accomplishment of certain results, may do the same or similar things, and bind the Government. They can pledge the faith of the Government as the President might do, and the pledge must be respected.

The rule is, that the President may exempt this or that thing from attack or capture by land or by sea.

1 Wheat. 54, Dexter's argument.

Justice Thompson, in *The Mary and Susan* (1 Wheat. p. 57), lays down the rule that, unrestrained of positive law, we can see no reason why this Government should be incapacitated to delegate the exercise of the rights of war to any individual who may command its confidence, whatever may be his national character.

When the President appoints a general to command his armies, and sends him to subdue a people or drive away an enemy, he delegates him all the authority which he possesses to do the thing; and as an incident to it, the commander may do everything that, in his judgment, is needed to that end where he is not restrained by positive law.

It is not denied that the President may pardon, may relieve the person or the property of those engaged in the rebellion, or may offer rewards and agree to pay those who may assist him or the national forces in bringing about a result supposed to be advantageous to the country. If he may do those things, he may delegate authority to do them to such agencies as he may appoint.

General Banks was appointed by the President to command the land forces in the expedition up Red River, and Rear Admiral Porter to command the naval forces. Both, within the sphere of their commands, could do whatever the President could do were he present. Whether wisely or otherwise, when they exercised their judgments, whatever they did or promised to do, was conclusive, and bound their Government. They both needed the services of persons whose experience aud familiarity with that country would enable them to point out the safest and wisest routes, both for safety and success. They found such persons in Captain W. W. Withenbury and Captain Ross W. Doyle. Both were Red River

steamboatmen of long experience, and knew the country as well as the river. They sought these military and naval commanders as soon as they came to Red River, and volunteered their services, Withenbury when they came, and Doyle as soon as he could make his way to New Orleans, where he met General Banks and accompanied him to Red River. Their services are testified to as being of great value to both arms of the service, and their good faith and loyalty warmly endorsed by both commanders.

In consideration of their services, General Banks gave them permission to bring out their cotton. (See the document signed by Hollabird and approved by General Banks, Record, pp. 82, 83.) This very cotton was embraced in that lot. (See the evidence of J. H. McKee and others.) Some cotton was brought out under that permit.

Rear Admiral Porter promised them protection for their cotton, and expressly agreed to give them a convoy for this special lot of cotton. (Depositions of Withenbury, Doyle, Martin, J. H. McKee, and Porter's written order of protection.) This was *after* inspecting the bill of sale from the Confederate Government for this cotton. He knew where it was located, and the manner in which they acquired it. (See depositions of Martin, Withenbury and Doyle.) Thus, both commanders, in consideration of their well-defined loyalty and their valuable services, promised Withen- & Doyle their protection for this cotton, and assistance to get it out of its then perilous condition.

The attempt, now, to hold this cotton is violative of their promises and permits. The well-known doctrine of estoppel *in pais*, at law and in equity, would effectually interfere to close the door against this unjust claim. It involves a painful reflection upon the good faith of a great Government. It seeks to make that Government do what one of its high-minded citizens would blush to attempt to do, even toward a stranger, but much less toward its own loyal citizens. At the very moment of time that these self-sacrificing men were engaged in the seervice of their country, trying to save the army from destruction, and the millions of money invested in steamboats from being lost on the rapids of Red River, certain boats of the navy take away this very cotton and, carrying

it to Cairo, libel it as prize of war; thus wholly ignoring the rights of these claimants and those solemn pledges. A more equitable estoppel can not be imagined. It was no capture, but was a lawful carrying the cotton away under this arrangement, and must inure to the benefit of these claimants. These representatives of the Government did voluntarily what they were bound to do, and Withenbury & Doyle are entitled to the benefit of it. Read what Martin, Governor Wells, General Banks, Rachal, J. H. McKee, *et seq.*, say on this point, and then consider the clear and manly statements of Withenbury & Doyle, and the language of their depositions. There is no difference of opinion, either on the point of the value and extent of their services to our cause and authorities, or of the clear and well-understood agreement on the part of our military and naval authorities and Withenbury & Doyle, as to the protection of their property, and more especially this identical lot of cotton. I direct the attention of the Court to what Martin, John H. McKee, and other witnesses say in corroboration of Withenbury & Doyle on these two points, and also on the point that, acting on the good faith of the Federal authorities, that they would not only protect their property, but would assist them in bringing it out, Withenbury & Doyle went at once into the active service of the army and navy, giving no further attention to taking care of and bringing their cotton to New Orleans, the one (Withenbury) serving Admiral Porter, and the other (Doyle) going to New Orleans and accompanying General Banks on his headquarters boat to the Red River; and that, while they were engaged in this service, *and without their knowledge*, this cotton was removed from its place of storage by certain boats of the Federal navy to Cairo. These facts are not denied or questioned. But the *written* evidence of General Banks and Admiral Porter concurrent with the events, afford the fullest proof of the purpose of these commanders to protect and uphold Withenbury & Doyle in their rights of property in this cotton. Martin, J. H. McKee, Withenbury, and Doyle, and others state that both of these commanders were distinctly informed of their source of title to this property. When the agreement was made with General Banks at New Orleans (see J. H. McKee's deposition) to allow twenty-five hundred bales of cotton to be brought out, *this*

lot was included in the arrangement, and its peculiar title explained; and when Admiral Porter agreed to furnish Withenbury & Doyle a convoy for this very cotton, he was actually in possession of the bill of sale from the C. S. A. to Withenbury & Doyle, and kept it until Withenbury & Doyle were on the eve of leaving for New Orleans on the United States transport John Warner. (See Withenbury & Doyle's and Martin's depositions and statements.)

I assume that these arrangements are so clearly proved that they do not admit of a doubt, and that Withenbury & Doyle rendered all the service and performed all the duties required of them in *good faith* and to the acceptance of the Federal authorities. If they did, what honesty or justice is there in denying to them the restoration of their property? I invite, nay, I challenge any one to point out one, even the slightest, intimation or doubt anywhere raised in the testimony, questioning their good faith, their loyalty, or their fair dealing. In the midst of all this array of witnesses, loyal and disloyal, honest and dishonest, brought from every part of the trans-Mississippi Department, some of them crimsoned with the blood of loyal people, not one of them has attacked the good faith, the honesty, the faithfulness or loyalty of Withenbury & Doyle to their country and its cause. And now, after the elapse of nearly four years, their claim for this cotton, and the nature of their title to it, being well understood throughout *the country where it was* raised, and where these transactions took place, subjected to the freest criticism, they stand up in one of their own courts and fearlessly demand the protection of their rights to this property, and ask their Government to restore it to them, according to the promises of their authorized officers. The Judge Advocate General of the army, passing upon a claim for property taken during the war from a loyal citizen, accompanied by a promise to reimburse him made by the department commander, *holds* "that it would not comport with the dignity and honor of the Government to repudiate the official action of the department commander." (Dig. of Opinion of the Judge Adv. Gen., edition of 1866, pp. 50, 51, par. 3.)

VI.

THEY COULD NOT ESCAPE WITH OR WITHOUT THEIR PROPERTY.

I need hardily examine the evidence to show how impossible it was for Withenbury & Doyle to escape from the rebel lines with their property. Although some particular instances of their attempts to escape are given by the witnesses and by these men themselves, I can not refer to them all, but I may be permitted to enumerate some of the evidence.

Rachal says that they could not have escaped without running great risk of losing their lives and their property. Red River was strongly guarded by a military force, of which the witness was one.

Samuel M. Todd, a rebel provost marshal at Alexandria, says it was impossible, and gives some facts. George T. Wiggins, John J. Browder, John H. McKee, Captain Hayes (who described the state of affairs), Dr. Ames, George R. Remer, J. M. Martin, and John Heinn, speak to the same facts.

VII.

THEY TAKE THE OATH OF ALLEGIANCE.

But if their rights were not fully protected by these acts of their commanders, and they do not amount to estoppels on the part of the Government, the fact that Withenbury & Doyle took the oath of allegiance, one as early as January 1, 1864, and the other on March 31, 1864, *fifteen or sixteen days before the naval authorities took possession of this cotton*, in accordance and in obedience with the President's proclamation of December 8, 1863. This proclamation was validated and declared conclusive by Congress, March 2, 1867, wherein he promises restoration of rights of *property*, etc., should remove all doubts of their right to claim and hold this property. Whatever disabilities it may have labored under before, this fact relieves this cotton of them. The rule is, that a title to property acquired during the war, is cured and made perfect with the return of peace. These two acts concurring, the oath of allegiance and the return of peace, even if there was defect of title in this property, it was made perfect in Withenbury & Doyle, and, as loyal citizens of the United States, their Government will protect them in that title.

Now, if the offenses charged to have been committed by those in rebellion, were offenses against the United States, it is not difficult to show that the President could pardon them. The Constitution says: "The President shall have power to grant reprieves and pardons for all offenses against the United States, except in case of impeachment." This Court, in *ex parte* Garland, says: "The power

of pardon extends to every offense known to the law." Congress, in a recent enactment (March 2, 1867, 13 vol. Stat. at Large), has made conclusive the proclamation and acts of the President. It is entitled, "An act to declare valid and conclusive certain proclamations of the President, and acts done in pursuance thereof, or by his orders, in the suppression of the late rebellion against the United States."

For a full statement of the evidence, see *Abstract* accompanying this brief on the points herein discussed.

But I can not pursue this discussion further without extending this paper to an unreasonable length. Indeed, notwithstanding its length, I am conscious that I have done no more than to state in the most general way some of the more prominent points drawn out by the testimony, and have, in the same general way, called attention to the law applicable to the questions discussed. Entertaining the clearest convictions of the evidence, I ask, what I know the Court will give, a careful consideration of the whole case, and the result will not be doubtful.

R. M. CORWINE,

For Withenbury & Doyle.

APPENDIX.

Order of the President as Commander-in-Chief of the Army and Navy to Major General Banks, assigning him to the command of the Department of the Gulf.

[COPY.]

HEADQUARTERS OF THE ARMY,

Washington, D. C., Nov. 9, 1862.

MAJOR GENERAL N. P. BANKS,

Commanding.

General: The President of the United States, having assigned you to the command of the Department of the Gulf, you will immediately proceed with the troops assembling in transports at Fort Monroe to New Orleans, and relieve General Butler. An additional force of some ten thousand men will be sent to you from Boston and New York as soon as possible.

The first military operation which will engage your attention, on your arrival at New Orleans, will be the opening of the Mississippi and the reduction of Fort Morgan and Mobile city, in order to control that bay and harbor. In these expeditions you will have the co-operation of the Rear Admiral commanding the naval forces in the Gulf and Mississippi River. A military and naval expedition is organizing at Memphis and Cairo to move down the Mississippi and co-operate with you against Vicksburg and any other point the enemy may occupy on that river. As the ranking general in the Southwest, you are authorized to assume control of any military forces from the Upper Mississippi that may come within your command. The line of division between your department and that of Maj. Gen. Grant, is therefore left undecided for the present, and you will receive superior authority as far north as you may ascend the river.

The President regards the opening of the Mississippi as the first and most important of all our military and naval operations, and it is hoped you will not lose a moment in accomplishing it.

This river being opened, the question arises, how the troops and naval forces can there be employed to the best advantage? Two objects are suggested as worthy of your attention. *First.* On the capture of Vicksburg, to send a military force directly east to destroy the railroad at Jackson and Meridian and thus cut off all connection by rail between northern Mississippi and Mobile and Atlanta. The latter place is now the chief military depot of the rebel armies in the West. *Second.* To ascend, with a naval and military force, the Red River, as far as it is navigable, and thus open an outlet for the sugar and cotton of northern Louisiana. Possibly both of these objects may be accomplished, if the circumstances should be favorable.

It is also suggested that, having Red River in our possession, it would form the best base for our operations in Texas.

It is believed that the operations of General Rosecrans in East Tennessee, of General Grant in northern Mississippi, and of General Steele in Arkansas, will give full employment to the enemy's troops in the West, and thus prevent them from concentrating in force against you. Should they do so, you will be reinforced by detachments from one or more of these commands.

These instructions are not intended to tie your hands or to hamper your operations in the slightest degree. So far away from headquarters, you must necessarily exercise your own judgment and discretion in regard to your movements against the enemy, keeping in view that the opening of the Mississippi River is now the great and primary object of your expedition; and I need not assure you, General, that the Government has unlimited confidence, not only in your judgment and discretion, but also in your energy and military promptness.

Very respectfully, your obedient servant,

(Signed) H. W. HALLECK.
General-in-Chief.

Official copy.

(Signed) J. C. KELTON.
Assistant Adjutant General.

HEADQUARTERS OF THE ARMY,
January, 20, 1865.

Supreme Court of the United States.

DECEMBER TERM, 1866.

WITHENBURY & DOYLE, Claimants and Appellants,

vs.

THE UNITED STATES.

No. ~~270.~~ 112

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.

ABSTRACT OF THE EVIDENCE ON THE FOLLOWING HEADS.

1. The Loyalty of Withenbury & Doyle.
2. Their Steamboats were impressed and the services of Withenbury & Doyle rendered under duress.
3. Ownership of the Steamer Horner and her Barge and the Steamer Vigo, and their fate.
4. The Cotton was in lieu of the Steamboats.
5. The Sale and Purchase of the Cotton.
6. Withenbury & Doyle were promised protection by the United States authorities for their property, and facilities to carry it to New Orleans and into the loyal States.

R. M. CORWINE,

Proctor.

McGill & Witherow, Printers & Stereotypers, Washington, D.C.

Supreme Court of the United States.

WITHENBURY & DOYLE, CLAIMANTS AND APPELLANTS,

vs.

THE UNITED STATES.

1. LOYALTY OF WITHENBURY & DOYLE.

JOHN M. MARTIN (Record, page 60) says:

"Captain Withenbury often expressed to me a wish for an opportunity to escape with his boats to the Union lines, but as he could not do so, he would submit and do the best he could. Captain Doyle I know to be a Union man."

Also, page 57: In 1863, at Alexandria, Louisiana, this witness, accompanied by Captain Withenbury, went to Admiral Porter and offered their services as Red River pilots. They gave the Admiral all the information in their power. "We told him (says the witness) of all the peculiarities of Red River, and pointed out all the dangerous localities to navigators unused to the river; gave him the names and whereabouts of the principal rebels there, both citizen and military; also gave him the names of the most prominent Union men; gave him the names of all the steamboats on Red and Ouachita rivers, as well as the sentiments of their commanders and crew, and the places where the boats were then secreted."

Also, page 62: "I went with Captain Withenbury to see General Banks, in 1863, in his private room in the "Ice House" hotel, where General Banks asked Captain Withenbury a great many questions concerning the river, the country, and the people, and I know that in answering all these questions Captain Withenbury gave correct answers, thereby giving General Banks much valuable information. We consulted together our maps, which General Banks had in his room, correcting some errors and giving general information of the country and

much service to him. Captain Withenbury answered General Banks that he had more than twenty years' experience on Red River, and that he would be willing to impart to him all his knowledge of the country and river, in aid of the Union cause, and would go with the army or navy, as he could best serve the interest of the expedition."

On page 63 he says, speaking of the arrival of the Union forces in 1864: "Captain Withenbury and myself lost no time in visiting Admiral Porter and renewing our offer of services, which were at once accepted. We commenced immediately giving instructions to the pilots on the fleet. Every one of them were at that time strangers to the river. We assisted in piloting the gunboats over the falls, also some of the transports, and continued as long as our services were needed. I have examined paper marked 'B.' I saw Admiral Porter write and sign it. He did this without Captain Withenbury asking him for it."

(Paper B.)

"U. S. MISSISSIPPI SQUADRON,
"FLAG-SHIP BLACK HAWK, *March* 19, 1864.

"*To whom it may concern:*

"W. W. Withenbury having taken no part in the rebellion against the United States Government, and having offered no aid or assistance to the rebels, military and naval officers are requested to give W. W. Withenbury's property such protection as lies in their power to do.

"DAVID D. PORTER,
"*Rear Admiral, comd'g Miss. Squadron.*"

REMARKS.—This was sometime, near a month, before the cotton was taken possession of by the gunboats, that being about the 11th of April.

W. W. WITHENBURY (Record, page 75) says:

"I was in New Orleans in the spring of 1861; my business was steamboating from New Orleans to Red River and tributaries up to April, 1863. * * * In May, 1863, I reported myself to General Banks and Admiral Porter as ready and willing to assist in that campaign." Again: "My sentiments were always against the rebellion, and I anxiously sought every opportunity to aid the United States forces and Government in their efforts to suppress it." Again, after describing how he was forced to use his steamboats, he says:

"I never rendered the least military assistance to the rebellion, nor had I any sympathy with it."

Also, page 77: "In March, 1864, immediately upon the arrival of the United States army and navy, I entered upon the duties of pilot to gunboats and transports, and continued to render service until 5th of May following. My services were deemed important, as I was a practical Red River and Ouachita pilot of more than twenty years' experience."

Also, further along: "I went to Grand Ecore as a pilot of the transport on which General Banks had his headquarters, having first obtained Admiral Porter's permission to do so. This was necessary, as I was under orders to report to him daily. Captain Doyle was also constantly present and ready to render any service to the campaign by imparting to General Banks and Admiral Porter his knowledge of the people, the river, and the situation and spirit of the enemy, which knowledge was the result of his many years' experience in that country and thorough acquaintance with the people."

Also, pages 82 and 83: Agreement between the military and J. H. McKee, approved by General Banks, permitting R. W. Doyle to bring to New Orleans 2,500 bales of cotton; and the deposition of said Doyle, (page 84,) showing that those 2,500 bales embraced and covered the Tatum and Simmons cotton, and that this privilege was granted in consideration of services and information to be rendered to the Government authorities. See this permit, as follows, viz:

Memorandum of an agreement made this 30th day of January, 1864, between the United States, represented by Colonel S. B. Holabird, Chief Quartermaster of the Department of the Gulf, of the first part, and J. H. McKee, of the city of New Orleans, of the second part, witnesseth:

That whereas there is in the States of Louisiana and Texas a large amount of cotton belonging to the so-called Confederate States Government, which cotton is in great danger of being burned by the Confederate States cotton agents and military authorities, in the event of the United States forces marching into the country where the same is collected and stored. And whereas the said J. H. McKee believes that he can prevent the destruction of a great deal if not the whole of said cotton:

Now, therefore, the party of the first part hereby agrees, in consideration of the efforts of the said party of the second part to save the said cotton, and have it delivered over to the military forces of the United States, to pay to the party

river. General Banks told Captain Withenbury that his name had been given to him as one who could and would be of of the second part or to his agent, J. H. McKee, of New Orleans, the sum of eighteen cents per pound on every pound of said cotton which the said military forces of the United States ever got into their possession in said States aforesaid; and in order to prevent the application of any portion of the sum of eighteen cents per pound to the uses of the Confederate Government, or to persons hostile to the Government, it is further agreed that the said sum of eighteen cents per pound for all cotton sold by the Government of the United States under this agreement shall be deposited in the banks of New Orleans, subject only to the private order of the Chief Quartermaster of the department, and the said McKee, until satisfactory assurances and guarantees are given that it is not to be used in such hostile operations against the Government of the United States, it being understood, however, that no objection is to be made to the payment of the sum, or any portion thereof, to any private parties having interest therein, for private uses, wherein said satisfactory assurances and guarantees are given. And the said party of the first part agrees to use all efforts consistent with the public service, to collect together and transport to market at New Orleans, or elsewhere, the said to be pointed out to them as belonging to the Confederate States, and to sell the same at public auction with the least possible delay, and immediately pay over the said sum of eighteen cents per pound, free and clear of all charge taxes, freights, or other expenses whatsoever, aforesaid. And in consideration of the foregoing, the said party of the second part hereby agrees to use all his efforts to protect the said cotton from destruction, and to furnish to the said party of the first part full information of the location of said cotton, the number of bales, weights, marks, and as far as possible the title papers from the planters and others from whom it was bought. It is further agreed, by the party of the first part, that in consideration of the *services* of R. A. Porter, and *R. M. Doyle, in the above behalf, each of them shall be permitted to bring into New Orleans their private property, consisting of cotton now lying near Alexandria, Louisiana, to the extent of twenty-five hundred bales each, on the United States transports, and under the control of the United States quartermaster's department, each of the said parties to have three hundred bales, to be delivered to them upon the payment of freight. The remaining forty-four hundred bales shall be sold by the United States quartermaster's de-*

partment, and fifty per cent. of the net proceeds paid over to the said parties, Porter and Doyle.

In witness whereof the said parties have hereto set their hands and seals this 30th day of January, 1864.

[L.S.] (Duplicate.) S. B. HOLABIRD,
Col., A. D. C. Chief Q. M. Dep't Gulf.

[L.S.] J. H. McKEE.

HEADQUARTERS, NEW ORLEANS, *30th January*, 1864.

Approved. N. P. BANKS,
Maj. Gen. Commanding.

Record, pages 94, 95, 96, J. H. McKEE states that so much of the above contract as related to Doyle was intended to embrace the cotton of Withenbury and Doyle, and more especially the nine hundred and thirty-five bales now and herein in controversy. That all the circumstances connected with their stay in the Confederacy, the loss of their boats, their manner, and the circumstances connected with the acquisition of the cotton, their title papers, were fully explained and shown to General Banks when he ordered the agreement made, and when he approved of it. General Banks likewise states the object of Doyle's visit to him in New Orleans, and the fact that he accompanied him to Red River to aid him by his advice and counsel.

R. M. DOYLE (page 84) says: "I was opposed to the act of secession, and my sentiments were always for the Union, and have been ever since the rebellion broke out, and still continue so. I never gave any military aid or comfort to the so-called Confederate States. I was frequently compelled to perform service with my boat for them, by military orders, which, if I did not do, I must have been taken off of her and put into the army. I also had to accept situations in the civil service (when my boat was laid up by low water) or be conscripted and made to go into the army."

General N. P. BANKS (pages 97, 95:) "That in the spring of 1863, while the United States army was in the occupation of Red River, he knew Captain W. W. Withenbury; that said Withenbury was recommended to deponent by persons in whom deponent had entire confidence, as a loyal man; that said Withenbury rendered valuable services to the United States Government in said campaign, and that deponent had no reason whatever to doubt the loyalty or patriotism of said Withenbury." Again, "In addition, deponent gave

said Withenbury a pass through the lines of the army for the purpose of receiving from him, at any time thereafter, information as to the movements of the enemy, or on other subjects useful to the Government. It was understood that said Withenbury was to remain in said Red River country for that purpose. In the spring of 1864 deponent met said Withenbury again, under similar circumstances, as above stated; and his conduct confirmed the confidence of deponent in the loyalty and patriotism of said Withenbury. That said Withenbury, from time to time, gave him information and advice in regard to the enemy, the character of the country, and the sentiments of the people, which was of importance, and upon which deponent relied with entire confidence; and he never had occasion to distrust the advice or the integrity of said Withenbury; whatever he did was from his own choice, and not from compulsion."

Again, pages 144 and 145: "He (Captain Withenbury) met me at Alexandria on my return with the army, in March, 1864, and accompanied me as a pilot on my headquarters transport, as far as Grand Ecore, when I left the river. He gave me, on the way, most useful information with regard to the country and the people on the route; also furnished General Stone, of my staff, several useful and important maps of the country, besides making sketches of difficult and dangerous portions of the river—thus evincing a desire to do all in his power to aid the Government, notwithstanding much of his property had been destroyed by the rebels, since 1863, and he had been severely persecuted by the rebels for his loyal sentiments."

Again, General Banks says: "Captain Doyle came to New Orleans from Alexandria in January, 1864, and brought important information from that country, and through reliable citizens here, he communicated the same to me for the benefit of the Government. Captain Doyle, as a practical Red River steamboat man, accompanied me on my headquarters transport to Alexandria, in March, 1864, and, from the knowledge I have of him, I regard him as a loyal man, and am satisfied that his object in coming out of the rebel lines to this city, in 1864, was to bring valuable information to the Government, and at the same time do what he could to protect the interests of himself and Captain Withenbury."

Also, (page 113,) ADOLPH RACHAL says: "He has known Withenbury for twenty years or more, and Doyle for seven or eight years, and has heard them express themselves as

opposed to secession, rebellion, and in favor of the Union. The whole time of the late war they were suspected by the people of the locality about Alexandria, and wherever they were, with being friendly to the Union."

Doctor EDWARD AMES (page 93) says: "He knows Withenbury has always been a staunch Union man, and that during the reign of the rebels in New Orleans he many times expressed himself so publicly as to endanger his personal liberty; and further, that in expressing Union sentiments in the months of March and April, 1862, on his boat on Red River, he was threatened with violence, and was published in the rebel newspapers in New Orleans as a man striving to promulgate Union sentiments among the people, and, consequently, a dangerous man to the Confederacy."

In 1862, after New Orleans was captured by our forces, (page 92,) Withenbury communicated with the witness as to the best mode of escaping with his boat from Red River.

He says (page 93) "that he has known Doyle as long as he has know Withenbury, and believes him to be a thorough Union man and loyal to the United States."

General WILLIAM BAILY (page 154) says: "He knows Withenbury and Doyle well, one twelve, the other seven years. Saw them frequently, and had many interviews with them during the war and knew their sentiments well. I would as soon doubt the loyalty of President Lincoln as that of either of these two men. Each spent a portion of their time at his plantation in the parish of Rapides."

GEORGE R. REMER (page 90) says: "That Captain Withenbury's steamboat (the Homer) *did not hoist a rebel flag*, although most of the boats did. Has heard Captain Withenbury express Union sentiments. I told him he talked too much, as he was in the rebels' power and would get into a scrape. At another time a number of men made the boat land and talked of hanging him."

Captain JOSEPH COOMBS (page 86) says "he knew Withenbury and Doyle during the war, in Louisiana. They were men looked upon as more favorable to the United States and were suspected, and common report said they were opposed to the Confederate Government."

Captain CHARLES HAYS (pages 98, 99,) says "he knows Cap-

tain Withenbury was suspected by the rebels of being a loyal Union man, and was published in the rebel papers in New Orleans and Shreveport as such. I know that it was necessary for Captain Withenbury to disguise his sentiments as a Union man, and to act circumspectly and obey orders of the rebels, for the protection of his property and for his personal safety." Page 100: "I always considered Captain Doyle a loyal Union man."

Governor J. MADISON WELLS (page 100) details a very important circumstance to show the strong devotion of Captain Withenbury to the cause of the United States.

Add to all this the fact that these men *never* took the oath of allegiance to the rebel Government, *never* served in their armies, and *never* rendered them any service or aid except under duress, the consequence of the tyranny which reigned throughout the country ruled by the rebels, or performed service by way of avoiding being conscripted for their armies, as was the case when they entered into an arrangement to move certain cotton, for which, however, they received no compensation, although they were to have one bale of cotton for every one moved. The same was true of their other services, rendered after they lost their steamboats. The services were all involuntary or rendered because they had no alternative but to render them or be put in the rebel ranks to fight their own countrymen.

2. THEIR STEAMBOATS WERE IMPRESSED AND THE SERVICES OF WITHENBURY AND DOYLE RENDERED UNDER DURESS.

The statement of Withenbury, (Record, pages 25, 26.)

"At the beginning of the present rebellion I was at New Orleans, having then the steamer Homer. Running to Red River, and finding it impossible to get out of the so-called 'Southern Confederacy' with my boat, I continued to run on Red River, striving to do the best I could to make a living and support for my family. When the news of the capture by the United States forces of New Orleans reached me I was at the town of Minden, Louisiana, a distance of seven hundred miles from New Orleans. The citizens of Minden and of the adjoining country suspected that I would be trying to get to New Orleans with my boat, and they warned

me publicly not to attempt it, but to lay my boat up in Lake Bistenau, where she then was. But I managed to get away, and while making my way out of the lake to the river they organized a party of thirty or forty men, on horses, to head me at Conchatta Point, on Red River, but I got beyond the Point before they arrived. Just below Conchatta Point I commenced meeting steamboats, which ran away from New Orleans and the Yankees. I was hailed by every one of them and told to turn back, 'that the Yankees had taken New Orleans,' &c. I kept on, however, determined to make my escape out of the Red River if possible. I arrived at the head of the falls, three miles above Alexandria, at midnight, landed my boat, and sent my clerk, George R. Remer, with a trusty man, in a yawl to reconnoitre the town, and ascertain if I could pass the place without being seen. The yawl was taken away from them, and they returned to me by land, with the information that it would be impossible for me to elude the vigilance of the people of Alexandria, as they were all in a state of intense excitement. Accordingly I proceeded to the town, landed there about daylight, when my boat was boarded by an armed mob of about a dozen men, who notified me not to leave town 'without permission of the military authorities.' After two days' parleying I got a permit to go as far down the river as Gordon's Landing, (now Fort De Russy.) I now fully expected to make my escape to the Mississippi river, and thence to New Orleans, without any difficulty, having recently received a letter from my friend, Dr. Edward Ames, of New Orleans, directing me to hoist the white flag as soon as I was out of the rebel lines. On reaching Gordon's Landing I found the river blockaded by a musket battery of about forty men. They hailed me and I landed, and used all my powers of persuasion with the rebels to be allowed to go five miles further down the river, under the pretext of getting wood, hoping thus to escape. They permitted me to go but sent two armed men as guards. I immediately set to work to bribe these two men, and thought I had succeeded, when, on landing at the wood yard, I found myself headed again, the balance of the battery having arrived by land. Having failed in this effort I gave it up and returned to Alexandria."

From this time forward his boat was under military orders, and the strictest military discipline kept on him and his boat.

Captain R. W. DOYLE'S statement, (page 33:) "When

the present rebellion broke out in the Cotton States, he was engaged in his legitimate business of steamboating on Red River with his steamboat 'Vigo,' and that he was unable to get his boat or himself away from that country, so as to return to those States of the United States where the flag of his country was recognized and respected; that he is a native of Steubenville, Ohio, which was then his home; but every effort that he made to get away from rebel rule failed. His boat was impressed into the rebel service, and he was compelled, under the severest military rule, to take charge of her, and under service for that so-called government, or his boat sacrificed and himself impressed into the army. * * * He continued in this impressed service with the rebels until the 7th day of January, 1864, when he made his escape to New Orleans." See Captain Doyle's further statement on page 36, where he says: "That he would have returned to Ohio with his steamboat, as was his usual custom at the end of every season, the moment the rebellion broke out, had he been permitted to do so by the rebel authorities; but they prevented him *by force* every time he made an effort to escape."

On page 79 in Captain Withenbury's deposition, occurs this language, in answer to the question as to the peril ot himself and Captain Doyle, viz: "We were in peril of our lives whenever we manifested any disinclination to obey orders from the Confederate authorities for the use of our boats. This was also true of all the steamboat captains and owners within the rebel lines."

On the same page, after giving some special instances of oppression, he says: "On another occasion the steamer Starlight, Captain Charles Hays, was leaving Alexandria to go down stream, against orders. She was fired into by order of the military authorities and forced to land. And so all boats were kept constantly under orders of the rebels; and in low water, in the summer, when boats could not run, all the officers, from the captain down, were forced to do some other duty."

Captain JOHN M. MARTIN, (page 59:) "All steamboats within the rebel lines were immediately under the military authorities. Sometimes ordered by quartermasters, and sometimes by officers at different military posts on the river, from one place to another; and when so ordered, there was no alternative but to go, always reporting to the quartermaster or

commanding general at the point of destination, who again ordered them to return or go to other points, as they thought best." Speaks of those captains being put off his boat, because he refused to obey their orders, and he says: "Captain Doyle's boat, the Vigo, was taken by the military, and used a long time, and used in constructing a raft across Red River, near Fort De Russy, Captain Doyle refusing to remain on her while so employed. All their steamboat officers were exempt from service in the ranks while employed in their boats, but if they declined doing their duty, they were conscripted."

Also, on page 64, Captain MARTIN, by way of confirming Captain Withenbury's statement, already quoted above, says: "Early in the month of April, 1862, there was a public meeting of citizens at the mouth of Loggy Bayou, on Red River, when it seems Captain Withenbury had said something which led the people to suspect him of being unfavorable to the Confederacy and the rebel cause, and they passed resolutions denouncing him as a Union man, and one who ought not to be allowed to run at large in the country. They sent a copy of said resolutions to Shrevesport paper for publication; also, a copy to the New Orleans papers; and he was accordingly so published in both places. This was a short time before the capture of New Orleans. A mob, armed with guns and knives, had collected at the same point, and met Captain Withenbury on his way down the river, when they threatened him with violence, and it was by extraordinary good management and nice talking that he escaped. They accused him of urging the people, in the event of New Orleans being taken, to immediately open trade with the Federals, *assuring them that nothing would be taken from them without a just compensation!* that such course had been pursued by the Union army, wherever they had gone thus far, and he believed that the same course would be pursued here. All this he did say to them, in my hearing, and for this they met together to hang him. He also advised them to continue the cultivation of the cotton, which advice they counted to be treason."

ADOLPH RACHAL (page 113) says, in answer to the question whether Withenbury and Doyle could have escaped with their boats after the capture of New Orleans: "They could not have done so without running very great risk of losing their lives and property; because Red River at this point (Alexandria) was very strongly guarded by an armed militia force, of which deponent was a member. All boats coming to this point from above were boarded by a detail of the militia, and closely watched to prevent their escape. The

steamer Homer was above this point on Red River at the time of the capture of New Orleans, on the 25th of April, 1862. At that time the steamer Vigo was towed from New Orleans to some point above this place (Alexandria.)

"Interrogatory 9th. Were or were not all the steamboats in the department, whether willing or unwilling, forced to render service to the Confederate States Government when called upon by any military officers of the said Government?

"Answer. They were. In case of refusal the captain, if under conscript age, would have been conscripted, and, in any event, the boat would have been taken from him and placed in charge of some officer of the Government, and thus forced to render this service required."

SAMUEL TODD (page 110) says: "I had verbal orders from E. Surzet, Adjutant General to General R. Taylor, to place particular surveillance on Captain W. W. Withenbury, as he (Surzet) had been informed that Captain Withenbury was about to escape to the Federal lines with his steamboat Homer and her cargo. She was then lying at the wharf at Alexandria, Louisiana, loaded. This was about January or February, 1863. I was ordered to detain all steamboats coming down the Red River, and, in case they refused to stop or come to when ordered, I was required to shoot down promptly all on board, if necessary to effect the object. I had written orders in regard to steamboats from Lieutenant General E. Kirby Smith, at Shrevesport, Louisiana, and when I came within Federal lines on the 3d day of April, 1864, at Nachitoches, Louisiana, I delivered them, together with all others in my possession, to the provost marshal at that place, Captain Inwood. * * * I cautioned Captain Withenbury not to attempt to escape, for he certainly would lose his life and his boat if he did so." * * *

"Interrogatory. State whether any steamboat could have escaped from the rebel lines.

"Answer. I do not think it was possible. My command, consisting of one hundred and fifty men, was encamped on the Red River bank. These men were all mounted, and would have pressed any boat, and would have overtaken her had she gone past my camp. I had picket lines established to the mouth of Red River, and there was also a picket steamboat running up and down the river, from Alexandria to its mouth, for the purpose of watching steamboats on Red River and guarding the river from the approaches of the Federals." This witness took the oath of allegiance to our

Government, and has been ever since employed by our people, and was also a member of the Free-State Convention of Louisiana.

JOHN J. BROWDER (pages 109 and 110:) "I am a pilot on the Red River. I was a pilot with Captain Withenbury, commencing with February, 1862, on the steamer Homer, and continued until July in the same year. The Homer left New Orleans for Red River on her regular trip, on the 12th of April, 1862, and went up that river, and we were at Minden, above Alexandria, on that river, when we heard that the city of New Orleans had been taken by the Federal forces. After Captain Withenbury heard the news he decided to come to New Orleans, and continued to make provisions for that trip, purchasing provisions, cargo, &c., for the New Orleans market, and left Minden for New Orleans. On the way down, above Alexandria, we met the steamboats which left New Orleans at or about the time the city was taken, and the captains of these boats hailed Captain Withenbury and told him that the city had been taken, and that they had been ordered up the Red River by Governor Moore, and were ordered to turn back all boats they met. Captain Withenbury did not turn back, saying that he was determined to get to the city, if possible. We stopped at midnight three miles above Alexandria, and Captain Withenbury sent down the clerk in a yawl to Alexandria to ascertain if we could make our escape past the place before daylight. The clerk came back by land, as the Confederate authorities took the yawl from him, and he reported that it was impossible for the boat to pass Alexandria as the place was guarded. Captain Withenbury concluded to take the chances, and try and persuade the authorities to let him pass. We got to Alexandria almost daylight, when we were boarded by an armed force of about forty men, and they notified him not to leave without permission, and *left a guard on the boat.* Some three days after this Captain Withenbury started with the Homer down the river and got as far as Fort De Russy, when we were stopped by another armed force and ordered back. During the time I was pilot on the Homer, Captain Withenbury was particularly watched by the rebels, and it was impossible for him to get away without losing his life, as I had heard threats made against him, *especially if he attempted to make his escape.* I was aboard the Homer in April, 1862, at Loggy Bayou, when a mob threatened to hang him for expressing Union sentiments. I am

a loyal man, and have been a pilot for the United States Government for two years last past. Captain Withenbury is a pilot on the Red and Ouachita Rivers. I have always regarded Captain Withenbury as a Union man."

A. W. McKee, (page 70:) "To my knowledge they (Withenbury and Doyle) laid many plans to get their property protected and get themselves into the Federal lines, which, however, was a very difficult matter, owing to the very severe conscript and detective system established by the so-called 'Confederate States.'"

General William Baily (page 154) says: "Captain Withenbury owned the steamer Homer; Doyle owned the steamer Vigo. Each of these boats, as well as all boats on the Red River, were impressed into said service."

3. OWNERSHIP OF THE STEAMER HOMER AND HER BARGE AND THE STEAMER VIGO, AND THEIR FATE.

Captain John M. Martin says, (page 59:)

"I have stated that Captain Withenbury owned the steamer Homer; he also had the barge Envoy. Captain Doyle had the steamer Vigo. The Homer was a good passenger and freight boat of the capacity of 1,400 bales of cotton, or 400 tons. The barge was capable of carrying 350 tons. She was in constant use, and when the rebels fled from Alexandria, on the approach of the United States gunboats, they set her on fire at the head of the falls, two miles above Alexandria, and she was destroyed. The Vigo was capable of carrying 1,100 bales of cotton, and was a good Red River boat. The steamer Homer—Captain Withenbury's—left on the Ouachita River, above Monroe, where I was told the Confederates had her in transporting corn out of the bayou Bartholomew, and the last I heard of her the newspapers reported her capture by General Steel, at a point thirty miles below Camden, Arkansas. The Vigo, at the last account I had of her, was somewhere near Shrevesport, on Red River, in the hands of the Confederates. As I before stated, these boats were used principally, after the breaking out of the rebellion, by the Confederate authorities, sometimes by the

quartermasters, and sometimes by the beef and cotton agent, McKee."

RACHAL (page 113) says: "Withenbury was captain of the steamer Homer, and acknowledged owner of the same, and also the barge Envoy; and Doyle was the captain and owner of the steamer Vigo."

General WILLIAM BAILY (page 154) says: "Captain Withenbury owned the steamer Homer. Doyle owned the steamer Vigo. Each of these boats, as well as all boats on the Red River, were impressed into the service."

4. THE COTTON WAS IN LIEU OF THE STEAMBOATS.

Captain WITHENBURY (page 88) says, speaking of the consideration for the 935 bales of cotton: "It was in part payment for services of our steamboats and barges, rendered some time before the cotton was given to us. The hard usage of our boats and barges (one was burned by the rebels, as they could not get it out of the way of the advancing Union forces) rendered them so near worthless as to be of little further use to us, even if we could have got them away. This cotton, and the lots before alluded to, were all we got of any value for our services and boats, and we could not have got that but for the personal friendship and sympathy of A. W. McKee for us. *It was a voluntary contribution*, or act of justice; not a payment in pursuance of any contract with the Confederate Government, or any agreement before the services were rendered by us and our boats."

Referring to the contract which they made with A. W. McKee, to move certain cotton for a consideration, to be paid in cotton, bale for bale, Withenbury says, (on page 81:) "I never got any cotton on the contract referred to by McKee."

A. W. MCKEE, (page 68:) "In the latter part of August, 1863, W. W. Withenbury and R. W. Doyle came to me jointly and applied for payment of their accounts for past services required from their steamboats Homer and Vigo, and to ask my advice as to what they should do for the future, to avoid military service, and save themselves the labor of years. I promptly told them that I would answer that. I was aware their names were upon the list of the enrolling officers, and

that they were liable at any hour to conscription; but that if they would accept a contract to transport cotton from the Red to the Sabine River, I would pay them, in cotton, a liberal price, and, in addition, would pay them all back dues coming to them for the so called Confederate States." * * *

(Page 69.) "The price for the cotton sold to Withenbury and Doyle was bale for bale for all transported under contract; *fifty dollars* ($50) *per bale for amount due upon former services.*"

(Page 54.) Bill of sale for the 935 bales, which recites: "I have this day sold (and delivered the order for) to Messrs. W. W. Withenbury and R. W. Doyle, for and in part consideration of the amount due them from the Confederate States, *for the value of their steamers Homer and Vigo*, and other services of the same, the following described lots of C. S. A. cotton," &c., of which the 935 bales herein involved are part.

5. THE SALE AND PURCHASE OF THE COTTON.

A. W. McKee, (page 137 :) "On settlement, in the spring of 1863, there was a balance due them (Withenbury and Doyle) for services rendered under my direction of between eighty and ninety thousand dollars. The larger portion of said balance was due W. W. Withenbury, for services rendered in the winter of 1861 and early spring of 1862, at which time the so-called Confederate States Treasury notes were nearly at par with specie and Louisiana bank money. For these reasons, and those of friendship, which I held toward Withenbury and Doyle, (having been raised with Doyle from boyhood,) I was desirous to see them paid in the manner most agreeable and remunerative to themselves, and as they preferred their pay in cotton, and I had full authority to do so, I settled their account and paid them in cotton, as I have stated before." * * "I made this statement and agreement" * * "about August 22, 1863, at which time I took out of the general pile of vouchers that for the Simmons crops and one or two other smaller lots, and placed them in my private desk, and informed my sub-agents and clerks, Mr. M. M. Roher and Adolph Rachel, that they were set apart for Withenbury and Doyle." * * "From August, 1863, I considered the cotton so set apart for Messrs. Withenbury and Doyle at their risk. Had it been burned by accident, the loss would have been upon them, which I so informed my clerks, that I might have ample witness to my agreement with them."

M. M. ROHRER, (page 52.) He says: "When I informed McKee, on his return from Houston, Texas, that I had turned over to John A. Stevenson, on General Kirby Smith's order, about sixteen thousand bales of cotton, but not having the bill of sale of the Simmons cotton I had not turned it over, he remarked that he was glad of it, as he intended to pay Withenbury and Doyle with that lot." * * * "The above remark of McKee was made in the fall or winter of 1863."

JOHN A. STEVENSON, (page 135,) says: "I got the planters' receipts, delivered to me by Mr. Rohrer, sub-agent, except for some, which *he did not have the receipts to give me.*" * * * "*Among those lots which were on the list, but for which the receipt was not delivered to me, was the Simmons cotton, of some nine hundred and odd bales.*"

RACHEL, (page 112,) who was a clerk in the cotton office of McKee, says that he "knows that said McKee, as agent, did transfer the said nine hundred and thirty-five bales to W. W. Withenbury and R. M. Doyle, in settlement of dues from the Confederate States to said Withenbury and Doyle."

The title papers, viz., the planter's receipt, wherein he acknowledged to hold the cotton for the Confederate States of America, and would deliver it to the holder of the receipt, and the bill of sale, duly executed, were formally transferred to Withenbury and Doyle on the 6th January, 1864. *This was the only sale made of this property* by the custodians of the title, and the sale passed the title to Withenbury and Doyle absolutely.

The Confederate Government paid Simmons for it $50,000 in their securities, for which he realized $50,000 in land and negroes, (See John Ray's testimony, pages 87–88,) thus parting with them at par. The bill of sale, January 6, 1864, shows that Withenbury and Doyle got the cotton for their *impressed boats and involuntary service.*

The only other claimant for this cotton is the French house of G. A. Le More & Co., the evidences of whose claims are very fully examined in the brief filed in their case, No. 265, to which reference is had. They set up, in that record, three antagonistic titles, viz: First, That the cotton was procured from the Confederate Government in exchage for gray army cloth furnished by that house to Kirby Smith's army. Second, That it was purchased in Mexico, from a

Mexican, named Garcea; and third, That it was purchased from a naturalized Frenchman named Queyrouze, for greenbacks,at —— per bale, and Queyrouze got it from the Confederate Government in exchange for other cotton. In neither of these cases is it claimed that the purchase was earlier than in February, and in the last case it is clearly proved that the transaction (if there really was one) took place not earlier than sometime in the month of March, more than two months after the formal transfer of the title papers to Withenbury & Doyle, and fully seven months after the actual sale of the property to them by McKee. But an examination of the evidence will explode their pretended title and show that they were false and fraudulent, having no foundation in fact. But if they were real, they were acquired too late, and are liable to the further objection that these persons had no authority to transfer it, for the title was not in them to dispose of it. But these matters are discussed at considerable length in the brief referred to, and the facts are minutely stated.

6. WITHENBURY AND DOYLE WERE PROMISED PROTECTION BY THE UNITED STATES AUTHORITIES FOR THEIR PROPERTY, AND FACILITIES TO CARRY IT TO NEW ORLEANS, OR INTO THE LOYAL STATES.

1st. The agreement to transport twenty-five hundred bales on United States transports, (see Record, p. 82, for a copy of the agreement,) J. H. McKee, (p. 94, *et seq.*,) and General Banks, (p. 145,) show with much more clearness the consideration which moved General Banks to make this party that agreement. First, he desired to save all the cotton possible from destruction by burning, and Captain Doyle and Captain Withenbury could materially aid him in this. They were familiar with the country, with the people, with the location of the cotton throughout the Red River country, and being loyal men, sufficiently avouched for to General Banks, he might well desire to secure their services and information, and very properly agree to assist them in saving their cotton. Second, he had entered into an agreement a year before with Captain Withenbury, and the bills of sale exhibited to him (so says J. H. McKee) of this cotton, showed that it was the joint property of Withenbury and Doyle.

Independently of the fact that these men were voluntarily rendering the Government valuable services, at a time when it most needed them, for which it was bound in good faith to protect their property, in the absence of an express agreement, nevertheless, under the circumstances thus explained to General Banks, it obviously appeared to him that as loyal men, who had suffered for their loyalty, they were entitled to protection of their persons and their property.

Captain DOYLE (p. 84) says: "I received a permit from Major General N. P. Banks, commanding Department of the Gulf, at New Orleans, to bring out twenty-five hundred bales of cotton from that country. *It was* given for services and information given to him on my arrival at New Orleans, from that country, and also for the services rendered to him by Captain Withenbury, in his expedition to that country in the spring of 1863; he being fully informed as to how the title was acquired. The cotton on the Simmons plantation was included in the said permit.

2d. WITHENBURY (Record, page 77,) says: "General Banks and Admiral Porter, each repeatedly assured me, while on Red River, that all my property and the joint property of myself and Doyle should have the fullest protection in the power of the army and navy to give it. * * * At the very time that the nine hundred and thirty-five bales of cotton on the Simmons plantation and the thirty-four bales on the Maddox plantation were seized and sent to Cairo, by the order of Admiral Porter, I was rendering voluntary and gratuitous services to the navy and army transports."

JNO. M. MARTIN (page 60:) After speaking of what occurred at Alexandria in the spring of 1864, he being there and taking part with the United States navy, he says: "I heard Captain Withenbury tell Admiral Porter that he owned this Simmons cotton on the Ouachita, as well as some cotton higher up the river, *and Admiral Porter promised him assistance to get it out, and told him that, as soon as he could spare a gunboat from his fleet, he would give him convoy to go with a transport to get his cotton.*" * * * Page 61, after detailing the conversation between Withenbury and Porter with respect to the rumor that some United States gunboats had carried off this cotton, he says: "But he, at the same time, gave Captain Withenbury the assurance that, if it proved true that any of his cotton had been taken, it was lucky for him,

as he would certainly get it or the proceeds of it. I was with Captain Withenbury during the interview and heard the conversation as above stated." Again, on pages 61 and 62, he says: "On the 20th day of June, Captain Withenbury, Captain Doyle, and myself went on board Admiral Porter's flag-ship Black Hawk, at Mound City, Illinois, when Captain Withenbury asked the Admiral if he could not do something for him to assist him in taking the Simmons cotton, which was not yet sold. Admiral Porter answered him that the whole matter was out of his hands, as it had been handed over to the United States marshal, and must go through the courts; that, were it in his power to do so, he would give it up to him; that he was satisfied that he and Captain Doyle were entitled to it, and ought to have it. As they were leaving the boat Porter repeated the hope that Captain Withenbury might succeed in getting his pay for the cotton."

See also, page 64, paper B, annexed to Captain Martin's deposition—

"U. S. MISSISSIPPI SQUADRON,
"FLAG-SHIP BLACK HAWK, *March* 19, 1864.

"*To whom it may concern:*

"W. W. Withenbury having taken no part in the rebellion against the United States Government, and having offered no aid or assistance to the rebels, military and naval officers are requested to give W. W. Withenbury's PROPERTY such protection as lies in their power.

"DAVID D. PORTER,
"*Rear Admiral Comd'g Miss. Squadron.*"

Record, page 28. WITHENBURY, after stating the circumstances connected with the taking of his cotton by the gunboats, says: "I immediately went to Admiral Porter and reported to him the taking of my cotton, and showed him the bill of sale before mentioned, *and he told me that if any of my cotton was taken it should be returned to me.* I reminded him that he had given me protection and had promised to assist me in saving my property."

Also, page 29: "The next morning I asked Admiral Porter to give me some writing to the authorities at Cairo for my nine hundred and thirty-six bales of "Simmons" cotton, which I was satisfied had been taken from the plantation where it was stored, on the Ouachita river, and had already gone to Cairo. He wrote me a letter to Captain Pennock,

and promised to assist me in the matter himself, at Cairo, when he should arrive there."

Captain DOYLE (page 85) says: "Captain Withenbury and myself called on Admiral Porter, on board his flag-ship, and stated to him (and showed our bill of sale of the cotton on the Simmons plantation; also, other bills of sale similar to it of cotton on the Red River) that we had cotton on the Simmons plantation on the Ouachita river. *He promised us that as soon as we could get a transport to go for it he would send a gunboat along to convoy it, so that we would be able to get our cotton.*"

J. H. MCKEE (page 96,) says: "That he went to Alexandria with the last forces of Gen. Banks' expedition, and that on his arrival there he met W. W. Withenbury, who was engaged and in the employment of Admiral D. D. Porter, of the U. S. Navy, as a Red River pilot, and was assisting to pilot the United States gunboats over the falls. And further, that on one occasion this deponent went on board Admiral Porter's flag-ship, in company with Captain Withenbury, Captain Doyle, and Captain Martin, while said flag-ship was lying at Alexandria, and he saw Captain Withenbury show to Admiral Porter several bills of sale for cotton from the aforesaid Confederate States of America agents, and heard Withenbury complain to Admiral Porter that some of his men were seizing and carrying on board a boat or barge belonging to Porter's fleet, as prize, a portion of the cotton belonging to Withenbury. The said Withenbury explained at the time fully, to Porter, how he and Doyle obtained this cotton, and Admiral Porter then promised to stop his men from taking any more cotton belonging to the said Withenbury and Doyle, and to give them an order for the redelivery of their cotton then and there taken, to Withenbury and Doyle, upon its arrival at Cairo." * * "And said Withenbury did then and there state to Admiral Porter that he and Doyle owned nine hundred and thirty-five bales of cotton on the Ouachita River, which was stored on the plantation of one Dr. Simmons, where the said nine hundred and thirty-five bales were grown. And the said Withenbury did then produce and show to Admiral Porter the said bill of sale for these nine hundred and thirty-five bales of cotton, which Doyle produced to the deponent in New Orleans, in January, 1864, and which was included in the permit aforesaid, which bill of sale this deponent has fully described

above, and that Admiral Porter did then promise not to interfere with the said nine hundred and thirty-five bales, *but to offer and render the said Withenbury and Doyle all the assistance in his power to get it into the Union lines.*"

"Deponent further states that after the foregoing interview with Admiral Porter, the said Captain Withenbury, *in pursuance with this agreement for the protection of his cotton*, went with General Banks to Grand Ecore, as pilot on the transport on which the General traveled, and on his return to Alexandria, the said Withenbury resumed his duties and services as pilot on Admiral Porter's gunboats, *thus neglecting entirely his private interests.*"

Governor J. MADISON WELLS, (page 100,) after describing Withenbury's energetic action in securing the services of a first-class Red River pilot under circumstances of peculiar interest, says: "The deponent fully believes that in the foregoing matter, as stated, Captain Withenbury has been of great service to the Government, and the means of saving many hundreds of thousands of dollars, and probably of saving the entire army from disaster, as the transports were particularly needed below the lakes in the event of a further and hasty retreat being necessary, or for bringing up supplies to the army in case it remained at that place."

General BANKS, (page 144,) after reciting Withenbury's voluntary offer to aid the Government, says: "His assistance during the campaign of 1863 and 1864 was very important to the Government, and seemed to be dictated by a patriotic consideration for the interests of the country." * * "I gave him a pass through our lines in order to secure his services to the Government, as well as to render him all the assistance in my power to save his property, as I considered him entitled to all the protection for his property that any other truly good loyal citizen could claim."

These promises and agreements on the part of Admiral Porter are fully confirmed by what he wrote at a late day to the Secretary of the Navy. (Record, page 149.) On the 11th May, 1864, he wrote: "In all cases where persons came to me with claims, I either delivered the cotton to them or gave them receipts for it, instructing them how to get it at Cairo without being put to the expense of river transportation." * * Again: "When satisfied they had paid for the cotton I returned it to them, or gave them the necessary documents to enable them to get it."

Supreme Court of the United States.

DECEMBER TERM, 1866.

WITHENBURY & DOYLE, Claimants and Appellants.

vs.

THE UNITED STATES.

No. ~~270~~ 112

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.

ABSTRACT OF THE EVIDENCE ON THE FOLLOWING HEADS.

1. The Loyalty of Withenbury & Doyle.
2. Their Steamboats were impressed and the services of Withenbury & Doyle rendered under duress.
3. Ownership of the Steamer Horner and her Barge and the Steamer Vigo, and their fate.
4. The Cotton was in lieu of the Steamboats.
5. The Sale and Purchase of the Cotton.
6. Withenbury & Doyle were promised protection by the United States authorities for their property, and facilities to carry it to New Orleans and into the loyal States.

R. M. CORWINE,

Proctor.

McGill & Witherow, Printers & Stereotypers, Washington, D.C.

Supreme Court of the United States.

WITHENBURY & DOYLE, CLAIMANTS AND APPELLANTS,

vs.

THE UNITED STATES.

1. LOYALTY OF WITHENBURY & DOYLE.

JOHN M. MARTIN (Record, page 60) says:

"Captain Withenbury often expressed to me a wish for an opportunity to escape with his boats to the Union lines, but as he could not do so, he would submit and do the best he could. Captain Doyle I know to be a Union man."

Also, page 57: In 1863, at Alexandria, Louisiana, this witness, accompanied by Captain Withenbury, went to Admiral Porter and offered their services as Red River pilots. They gave the Admiral all the information in their power. "We told him (says the witness) of all the peculiarities of Red River, and pointed out all the dangerous localities to navigators unused to the river; gave him the names and whereabouts of the principal rebels there, both citizen and military; also gave him the names of the most prominent Union men; gave him the names of all the steamboats on Red and Ouachita rivers, as well as the sentiments of their commanders and crew, and the places where the boats were then secreted."

Also, page 62: "I went with Captain Withenbury to see General Banks, in 1863, in his private room in the "Ice House" hotel, where General Banks asked Captain Withenbury a great many questions concerning the river, the country, and the people, and I know that in answering all these questions Captain Withenbury gave correct answers, thereby giving General Banks much valuable information. We consulted together our maps, which General Banks had in his room, correcting some errors and giving general information of the country and

much service to him. Captain Withenbury answered General Banks that he had more than twenty years' experience on Red River, and that he would be willing to impart to him all his knowledge of the country and river, in aid of the Union cause, and would go with the army or navy, as he could best serve the interest of the expedition."

On page 63 he says, speaking of the arrival of the Union forces in 1864: "Captain Withenbury and myself lost no time in visiting Admiral Porter and renewing our offer of services, which were at once accepted. We commenced immediately giving instructions to the pilots on the fleet. Every one of them were at that time strangers to the river. We assisted in piloting the gunboats over the falls, also some of the transports, and continued as long as our services were needed. I have examined paper marked 'B.' I saw Admiral Porter write and sign it. He did this without Captain Withenbury asking him for it."

(Paper B.)

"U. S. MISSISSIPPI SQUADRON,
"FLAG-SHIP BLACK HAWK, *March* 19, 1864.

"*To whom it may concern:*

"W. W. Withenbury having taken no part in the rebellion against the United States Government, and having offered no aid or assistance to the rebels, military and naval officers are requested to give W. W. Withenbury's property such protection as lies in their power to do.

"DAVID D. PORTER,
"*Rear Admiral, comd'g Miss. Squadron.*"

REMARKS.—This was sometime, near a month, before the cotton was taken possession of by the gunboats, that being about the 11th of April.

W. W. WITHENBURY (Record, page 75) says:

"I was in New Orleans in the spring of 1861; my business was steamboating from New Orleans to Red River and tributaries up to April, 1863. * * * In May, 1863, I reported myself to General Banks and Admiral Porter as ready and willing to assist in that campaign." Again: "My sentiments were always against the rebellion, and I anxiously sought every opportunity to aid the United States forces and Government in their efforts to suppress it." Again, after describing how he was forced to use his steamboats, he says:

"I never rendered the least military assistance to the rebellion, nor had I any sympathy with it."

Also, page 77: "In March, 1864, immediately upon the arrival of the United States army and navy, I entered upon the duties of pilot to gunboats and transports, and continued to render service until 5th of May following. My services were deemed important, as I was a practical Red River and Ouachita pilot of more than twenty years' experience."

Also, further along: "I went to Grand Ecore as a pilot of the transport on which General Banks had his headquarters, having first obtained Admiral Porter's permission to do so. This was necessary, as I was under orders to report to him daily. Captain Doyle was also constantly present and ready to render any service to the campaign by imparting to General Banks and Admiral Porter his knowledge of the people, the river, and the situation and spirit of the enemy, which knowledge was the result of his many years' experience in that country and thorough acquaintance with the people."

Also, pages 82 and 83: Agreement between the military and J. H. McKee, approved by General Banks, permitting R. W. Doyle to bring to New Orleans 2,500 bales of cotton; and the deposition of said Doyle, (page 84,) showing that those 2,500 bales embraced and covered the Tatum and Simmons cotton, and that this privilege was granted in consideration of services and information to be rendered to the Government authorities. See this permit, as follows, viz:

Memorandum of an agreement made this 30th day of January, 1864, between the United States, represented by Colonel S. B. Holabird, Chief Quartermaster of the Department of the Gulf, of the first part, and J. H. McKee, of the city of New Orleans, of the second part, witnesseth:

That whereas there is in the States of Louisiana and Texas a large amount of cotton belonging to the so-called Confederate States Government, which cotton is in great danger of being burned by the Confederate States cotton agents and military authorities, in the event of the United States forces marching into the country where the same is collected and stored. And whereas the said J. H. McKee believes that he can prevent the destruction of a great deal if not the whole of said cotton:

Now, therefore, the party of the first part hereby agrees, in consideration of the efforts of the said party of the second part to save the said cotton, and have it delivered over to the military forces of the United States, to pay to the party

river. General Banks told Captain Withenbury that his name had been given to him as one who could and would be of of the second part or to his agent, J. H. McKee, of New Orleans, the sum of eighteen cents per pound on every pound of said cotton which the said military forces of the United States ever got into their possession in said States aforesaid; and in order to prevent the application of any portion of the sum of eighteen cents per pound to the uses of the Confederate Government, or to persons hostile to the Government, it is further agreed that the said sum of eighteen cents per pound for all cotton sold by the Government of the United States under this agreement shall be deposited in the banks of New Orleans, subject only to the private order of the Chief Quartermaster of the department, and the said McKee, until satisfactory assurances and guarantees are given that it is not to be used in such hostile operations against the Government of the United States, it being understood, however, that no objection is to be made to the payment of the sum, or any portion thereof, to any private parties having interest therein, for private uses, wherein said satisfactory assurances and guarantees are given. And the said party of the first part agrees to use all efforts consistent with the public service, to collect together and transport to market at New Orleans, or elsewhere, the said to be pointed out to them as belonging to the Confederate States, and to sell the same at public auction with the least possible delay, and immediately pay over the said sum of eighteen cents per pound, free and clear of all charges, taxes, freights, or other expenses whatsoever, aforesaid. And in consideration of the foregoing, the said party of the second part hereby agrees to use all his efforts to protect the said cotton from destruction, and to furnish to the said party of the first part full information of the location of said cotton, the number of bales, weights, marks, and as far as possible the title papers from the planters and others from whom it was bought. It is further agreed, by the party of the first part, that in consideration of the *services* of R. A. Porter, and *R. M. Doyle, in the above behalf, each of them shall be permitted to bring into New Orleans their private property, consisting of cotton now lying near Alexandria, Louisiana, to the extent of twenty-five hundred bales each, on the United States transports, and under the control of the United States quartermaster's department, each of the said parties to have three hundred bales, to be delivered to them upon the payment of freight. The remaining forty-four hundred bales shall be sold by the United States quartermaster's de-*

partment, and fifty per cent. of the net proceeds paid over to the said parties, Porter and Doyle.

In witness whereof the said parties have hereto set their hands and seals this 30th day of January, 1864.

[L.S.] (Duplicate.) S. B. HOLABIRD,
Col., A. D. C. Chief Q. M. Dep't Gulf.

[L.S.] J. H. McKEE.

HEADQUARTERS, NEW ORLEANS, *30th January*, 1864.

Approved. N. P. BANKS,
Maj. Gen. Commanding.

Record, pages 94, 95, 96, J. H. McKEE states that so much of the above contract as related to Doyle was intended to embrace the cotton of Withenbury and Doyle, and more especially the nine hundred and thirty-five bales now and herein in controversy. That all the circumstances connected with their stay in the Confederacy, the loss of their boats, their manner, and the circumstances connected with the acquisition of the cotton, their title papers, were fully explained and shown to General Banks when he ordered the agreement made, and when he approved of it. General Banks likewise states the object of Doyle's visit to him in New Orleans, and the fact that he accompanied him to Red River to aid him by his advice and counsel.

R. M. DOYLE (page 84) says: "I was opposed to the act of secession, and my sentiments were always for the Union, and have been ever since the rebellion broke out, and still continue so. I never gave any military aid or comfort to the so-called Confederate States. I was frequently compelled to perform service with my boat for them, by military orders, which, if I did not do, I must have been taken off of her and put into the army. I also had to accept situations in the civil service (when my boat was laid up by low water) or be conscripted and made to go into the army."

General N. P. BANKS (pages 97, 95:) "That in the spring of 1863, while the United States army was in the occupation of Red River, he knew Captain W. W. Withenbury; that said Withenbury was recommended to deponent by persons in whom deponent had entire confidence, as a loyal man; that said Withenbury rendered valuable services to the United States Government in said campaign, and that deponent had no reason whatever to doubt the loyalty or patriotism of said Withenbury." Again, "In addition, deponent gave

said Withenbury a pass through the lines of the army for the purpose of receiving from him, at any time thereafter, information as to the movements of the enemy, or on other subjects useful to the Government. It was understood that said Withenbury was to remain in said Red River country for that purpose. In the spring of 1864 deponent met said Withenbury again, under similar circumstances, as above stated; and his conduct confirmed the confidence of deponent in the loyalty and patriotism of said Withenbury. That said Withenbury, from time to time, gave him information and advice in regard to the enemy, the character of the country, and the sentiments of the people, which was of importance, and upon which deponent relied with entire confidence; and he never had occasion to distrust the advice or the integrity of said Withenbury; whatever he did was from his own choice, and not from compulsion."

Again, pages 144 and 145: "He (Captain Withenbury) met me at Alexandria on my return with the army, in March, 1864, and accompanied me as a pilot on my headquarters transport, as far as Grand Ecore, when I left the river. He gave me, on the way, most useful information with regard to the country and the people on the route; also furnished General Stone, of my staff, several useful and important maps of the country, besides making sketches of difficult and dangerous portions of the river—thus evincing a desire to do all in his power to aid the Government, notwithstanding much of his property had been destroyed by the rebels, since 1863, and he had been severely persecuted by the rebels for his loyal sentiments."

Again, General Banks says: "Captain Doyle came to New Orleans from Alexandria in January, 1864, and brought important information from that country, and through reliable citizens here, he communicated the same to me for the benefit of the Government. Captain Doyle, as a practical Red River steamboat man, accompanied me on my headquarters transport to Alexandria, in March, 1864, and, from the knowledge I have of him, I regard him as a loyal man, and am satisfied that his object in coming out of the rebel lines to this city, in 1864, was to bring valuable information to the Government, and at the same time do what he could to protect the interests of himself and Captain Withenbury."

Also, (page 113,) ADOLPH RACHAL says: "He has known Withenbury for twenty years or more, and Doyle for seven or eight years, and has heard them express themselves as

opposed to secession, rebellion, and in favor of the Union. The whole time of the late war they were suspected by the people of the locality about Alexandria, and wherever they were, with being friendly to the Union."

Doctor EDWARD AMES (page 93) says: "He knows Withenbury has always been a staunch Union man, and that during the reign of the rebels in New Orleans he many times expressed himself so publicly as to endanger his personal liberty; and further, that in expressing Union sentiments in the months of March and April, 1862, on his boat on Red River, he was threatened with violence, and was published in the rebel newspapers in New Orleans as a man striving to promulgate Union sentiments among the people, and, consequently, a dangerous man to the Confederacy."

In 1862, after New Orleans was captured by our forces, (page 92,) Withenbury communicated with the witness as to the best mode of escaping with his boat from Red River.

He says (page 93) "that he has known Doyle as long as he has know Withenbury, and believes him to be a thorough Union man and loyal to the United States."

General WILLIAM BAILY (page 154) says: "He knows Withenbury and Doyle well, one twelve, the other seven years. Saw them frequently, and had many interviews with them during the war and knew their sentiments well. I would as soon doubt the loyalty of President Lincoln as that of either of these two men. Each spent a portion of their time at his plantation in the parish of Rapides."

GEORGE R. REMER (page 90) says: "That Captain Withenbury's steamboat (the Homer) *did not hoist a rebel flag*, although most of the boats did. Has heard Captain Withenbury express Union sentiments. I told him he talked too much, as he was in the rebels' power and would get into a scrape. At another time a number of men made the boat land and talked of hanging him."

Captain JOSEPH COOMBS (page 86) says "he knew Withenbury and Doyle during the war, in Louisiana. They were men looked upon as more favorable to the United States and were suspected, and common report said they were opposed to the Confederate Government."

Captain CHARLES HAYS (pages 98, 99,) says "he knows Cap-

tain Withenbury was suspected by the rebels of being a loyal Union man, and was published in the rebel papers in New Orleans and Shreveport as such. I know that it was necessary for Captain Withenbury to disguise his sentiments as a Union man, and to act circumspectly and obey orders of the rebels, for the protection of his property and for his personal safety." Page 100: "I always considered Captain Doyle a loyal Union man."

Governor J. MADISON WELLS (page 100) details a very important circumstance to show the strong devotion of Captain Withenbury to the cause of the United States.

Add to all this the fact that these men *never* took the oath of allegiance to the rebel Government, *never* served in their armies, and *never* rendered them any service or aid except under duress, the consequence of the tyranny which reigned throughout the country ruled by the rebels, or performed service by way of avoiding being conscripted for their armies, as was the case when they entered into an arrangement to move certain cotton, for which, however, they received no compensation, although they were to have one bale of cotton for every one moved. The same was true of their other services, rendered after they lost their steamboats. The services were all involuntary or rendered because they had no alternative but to render them or be put in the rebel ranks to fight their own countrymen.

2. THEIR STEAMBOATS WERE IMPRESSED AND THE SERVICES OF WITHENBURY AND DOYLE RENDERED UNDER DURESS.

The statement of Withenbury, (Record, pages 25, 26.)

"At the beginning of the present rebellion I was at New Orleans, having then the steamer Homer. Running to Red River, and finding it impossible to get out of the so-called 'Southern Confederacy' with my boat, I continued to run on Red River, striving to do the best I could to make a living and support for my family. When the news of the capture by the United States forces of New Orleans reached me I was at the town of Minden, Louisiana, a distance of seven hundred miles from New Orleans. The citizens of Minden and of the adjoining country suspected that I would be trying to get to New Orleans with my boat, and they warned

me publicly not to attempt it, but to lay my boat up in Lake Bistenau, where she then was. But I managed to get away, and while making my way out of the lake to the river they organized a party of thirty or forty men, on horses, to head me at Conchatta Point, on Red River, but I got beyond the Point before they arrived. Just below Conchatta Point I commenced meeting steamboats, which ran away from New Orleans and the Yankees. I was hailed by every one of them and told to turn back, 'that the Yankees had taken New Orleans,' &c. I kept on, however, determined to make my escape out of the Red River if possible. I arrived at the head of the falls, three miles above Alexandria, at midnight, landed my boat, and sent my clerk, George R. Remer, with a trusty man, in a yawl to reconnoitre the town, and ascertain if I could pass the place without being seen. The yawl was taken away from them, and they returned to me by land, with the information that it would be impossible for me to elude the vigilance of the people of Alexandria, as they were all in a state of intense excitement. Accordingly I proceeded to the town, landed there about daylight, when my boat was boarded by an armed mob of about a dozen men, who notified me not to leave town 'without permission of the military authorities.' After two days' parleying I got a permit to go as far down the river as Gordon's Landing, (now Fort De Russy.) I now fully expected to make my escape to the Mississippi river, and thence to New Orleans, without any difficulty, having recently received a letter from my friend, Dr. Edward Ames, of New Orleans, directing me to hoist the white flag as soon as I was out of the rebel lines. On reaching Gordon's Landing I found the river blockaded by a musket battery of about forty men. They hailed me and I landed, and used all my powers of persuasion with the rebels to be allowed to go five miles further down the river, under the pretext of getting wood, hoping thus to escape. They permitted me to go but sent two armed men as guards. I immediately set to work to bribe these two men, and thought I had succeeded, when, on landing at the wood yard, I found myself hearded again, the balance of the battery having arrived by land. Having failed in this effort I gave it up and returned to Alexandria."

From this time forward his boat was under military orders, and the strictest military discipline kept on him and his boat.

Captain R. W. DOYLE'S statement, (page 33:) "When

the present rebellion broke out in the Cotton States, he was engaged in his legitimate business of steamboating on Red River with his steamboat 'Vigo,' and that he was unable to get his boat or himself away from that country, so as to return to those States of the United States where the flag of his country was recognized and respected; that he is a native of Steubenville, Ohio, which was then his home; but every effort that he made to get away from rebel rule failed. His boat was impressed into the rebel service, and he was compelled, under the severest military rule, to take charge of her, and under service for that so-called government, or his boat sacrificed and himself impressed into the army. * * * He continued in this impressed service with the rebels until the 7th day of January, 1864, when he made his escape to New Orleans." See Captain Doyle's further statement on page 36, where he says: "That he would have returned to Ohio with his steamboat, as was his usual custom at the end of every season, the moment the rebellion broke out, had he been permitted to do so by the rebel authorities; but they prevented him *by force* every time he made an effort to escape."

On page 79 in Captain Withenbury's deposition, occurs this language, in answer to the question as to the peril of himself and Captain Doyle, viz: "We were in peril of our lives whenever we manifested any disinclination to obey orders from the Confederate authorities for the use of our boats. This was also true of all the steamboat captains and owners within the rebel lines."

On the same page, after giving some special instances of oppression, he says: "On another occasion the steamer Starlight, Captain Charles Hays, was leaving Alexandria to go down stream, against orders. She was fired into by order of the military authorities and forced to land. And so all boats were kept constantly under orders of the rebels; and in low water, in the summer, when boats could not run, all the officers, from the captain down, were forced to do some other duty."

Captain JOHN M. MARTIN, (page 59:) "All steamboats within the rebel lines were immediately under the military authorities. Sometimes ordered by quartermasters, and sometimes by officers at different military posts on the river, from one place to another; and when so ordered, there was no alternative but to go, always reporting to the quartermaster or

commanding general at the point of destination, who again ordered them to return or go to other points, as they thought best." Speaks of those captains being put off his boat, because he refused to obey their orders, and he says: "Captain Doyle's boat, the Vigo, was taken by the military, and used a long time, and used in constructing a raft across Red River, near Fort De Russy, Captain Doyle refusing to remain on her while so employed. All their steamboat officers were exempt from service in the ranks while employed in their boats, but if they declined doing their duty, they were conscripted."

Also, on page 64, Captain MARTIN, by way of confirming Captain Withenbury's statement, already quoted above, says: "Early in the month of April, 1862, there was a public meeting of citizens at the mouth of Loggy Bayou, on Red River, when it seems Captain Withenbury had said something which led the people to suspect him of being unfavorable to the Confederacy and the rebel cause, and they passed resolutions denouncing him as a Union man, and one who ought not to be allowed to run at large in the country. They sent a copy of said resolutions to Shrevesport paper for publication; also, a copy to the New Orleans papers; and he was accordingly so published in both places. This was a short time before the capture of New Orleans. A mob, armed with guns and knives, had collected at the same point, and met Captain Withenbury on his way down the river, when they threatened him with violence, and it was by extraordinary good management and nice talking that he escaped. They accused him of urging the people, in the event of New Orleans being taken, to immediately open trade with the Federals, *assuring them that nothing would be taken from them without a just compensation!* that such course had been pursued by the Union army, wherever they had gone thus far, and he believed that the same course would be pursued here. All this he did say to them, in my hearing, and for this they met together to hang him. He also advised them to continue the cultivation of the cotton, which advice they counted to be treason."

ADOLPH RACHAL (page 113) says, in answer to the question whether Withenbury and Doyle could have escaped with their boats after the capture of New Orleans: "They could not have done so without running very great risk of losing their lives and property; because Red River at this point (Alexandria) was very strongly guarded by an armed militia force, of which deponent was a member. All boats coming to this point from above were boarded by a detail of the militia, and closely watched to prevent their escape. The

steamer Homer was above this point on Red River at the time of the capture of New Orleans, on the 25th of April, 1862. At that time the steamer Vigo was towed from New Orleans to some point above this place (Alexandria.)

"Interrogatory 9th. Were or were not all the steamboats in the department, whether willing or unwilling, forced to render service to the Confederate States Government when called upon by any military officers of the said Government?

"Answer. They were. In case of refusal the captain, if under conscript age, would have been conscripted, and, in any event, the boat would have been taken from him and placed in charge of some officer of the Government, and thus forced to render this service required."

SAMUEL TODD (page 110) says: "I had verbal orders from E. Surzet, Adjutant General to General R. Taylor, to place particular surveillance on Captain W. W. Withenbury, as he (Surzet) had been informed that Captain Withenbury was about to escape to the Federal lines with his steamboat Homer and her cargo. She was then lying at the wharf at Alexandria, Louisiana, loaded. This was about January or February, 1863. I was ordered to detain all steamboats coming down the Red River, and, in case they refused to stop or come to when ordered, I was required to shoot down promptly all on board, if necessary to effect the object. I had written orders in regard to steamboats from Lieutenant General E. Kirby Smith, at Shrevesport, Louisiana, and when I came within Federal lines on the 3d day of April, 1864, at Nachitoches, Louisiana, I delivered them, together with all others in my possession, to the provost marshal at that place, Captain Inwood. * * * I cautioned Captain Withenbury not to attempt to escape, for he certainly would lose his life and his boat if he did so." * * *

"Interrogatory. State whether any steamboat could have escaped from the rebel lines.

"Answer. I do not think it was possible. My command, consisting of one hundred and fifty men, was encamped on the Red River bank. These men were all mounted, and would have pressed any boat, and would have overtaken her had she gone past my camp. I had picket lines established to the mouth of Red River, and there was also a picket steamboat running up and down the river, from Alexandria to its mouth, for the purpose of watching steamboats on Red River and guarding the river from the approaches of the Federals." This witness took the oath of allegiance to our

Government, and has been ever since employed by our people, and was also a member of the Free-State Convention of Louisiana.

JOHN J. BROWDER (pages 109 and 110:) "I am a pilot on the Red River. I was a pilot with Captain Withenbury, commencing with February, 1862, on the steamer Homer, and continued until July in the same year. The Homer left New Orleans for Red River on her regular trip, on the 12th of April, 1862, and went up that river, and we were at Minden, above Alexandria, on that river, when we heard that the city of New Orleans had been taken by the Federal forces. After Captain Withenbury heard the news he decided to come to New Orleans, and continued to make provisions for that trip, purchasing provisions, cargo, &c., for the New Orleans market, and left Minden for New Orleans. On the way down, above Alexandria, we met the steamboats which left New Orleans at or about the time the city was taken, and the captains of these boats hailed Captain Withenbury and told him that the city had been taken, and that they had been ordered up the Red River by Governor Moore, and were ordered to turn back all boats they met. Captain Withenbury did not turn back, saying that he was determined to get to the city, if possible. We stopped at midnight three miles above Alexandria, and Captain Withenbury sent down the clerk in a yawl to Alexandria to ascertain if we could make our escape past the place before daylight. The clerk came back by land, as the Confederate authorities took the yawl from him, and he reported that it was impossible for the boat to pass Alexandria as the place was guarded. Captain Withenbury concluded to take the chances, and try and persuade the authorities to let him pass. We got to Alexandria almost daylight, when we were boarded by an armed force of about forty men, and they notified him not to leave without permission, and *left a guard on the boat.* Some three days after this Captain Withenbury started with the Homer down the river and got as far as Fort De Russy, when we were stopped by another armed force and ordered back. During the time I was pilot on the Homer, Captain Withenbury was particularly watched by the rebels, and it was impossible for him to get away without losing his life, as I had heard threats made against him, *especially if he attempted to make his escape.* I was aboard the Homer in April, 1862, at Loggy Bayou, when a mob threatened to hang him for expressing Union sentiments. I am

a loyal man, and have been a pilot for the United States Government for two years last past. Captain Withenbury is a pilot on the Red and Ouachita Rivers. I have always regarded Captain Withenbury as a Union man."

A. W. McKee, (page 70:) "To my knowledge they (Withenbury and Doyle) laid many plans to get their property protected and get themselves into the Federal lines, which, however, was a very difficult matter, owing to the very severe conscript and detective system established by the so-called 'Confederate States.'"

General William Baily (page 154) says: "Captain Withenbury owned the steamer Homer; Doyle owned the steamer Vigo. Each of these boats, as well as all boats on the Red River, were impressed into said service."

3. OWNERSHIP OF THE STEAMER HOMER AND HER BARGE AND THE STEAMER VIGO, AND THEIR FATE.

Captain John M. Martin says, (page 59:)

"I have stated that Captain Withenbury owned the steamer Homer; he also had the barge Envoy. Captain Doyle had the steamer Vigo. The Homer was a good passenger and freight boat of the capacity of 1,400 bales of cotton, or 400 tons. The barge was capable of carrying 350 tons. She was in constant use, and when the rebels fled from Alexandria, on the approach of the United States gunboats, they set her on fire at the head of the falls, two miles above Alexandria, and she was destroyed. The Vigo was capable of carrying 1,100 bales of cotton, and was a good Red River boat. The steamer Homer—Captain Withenbury's—left on the Ouachita River, above Monroe, where I was told the Confederates had her in transporting corn out of the bayou Bartholomew, and the last I heard of her the newspapers reported her capture by General Steel, at a point thirty miles below Camden, Arkansas. The Vigo, at the last account I had of her, was somewhere near Shrevesport, on Red River, in the hands of the Confederates. As I before stated, these boats were used principally, after the breaking out of the rebellion, by the Confederate authorities, sometimes by the

quartermasters, and sometimes by the beef and cotton agent, McKee."

RACHAL (page 113) says: "Withenbury was captain of the steamer Homer, and acknowledged owner of the same, and also the barge Envoy; and Doyle was the captain and owner of the steamer Vigo."

General WILLIAM BAILY (page 154) says: "Captain Withenbury owned the steamer Homer. Doyle owned the steamer Vigo. Each of these boats, as well as all boats on the Red River, were impressed into the service."

4. THE COTTON WAS IN LIEU OF THE STEAMBOATS.

Captain WITHENBURY (page 88) says, speaking of the consideration for the 935 bales of cotton: "It was in part payment for services of our steamboats and barges, rendered some time before the cotton was given to us. The hard usage of our boats and barges (one was burned by the rebels, as they could not get it out of the way of the advancing Union forces) rendered them so near worthless as to be of little further use to us, even if we could have got them away. This cotton, and the lots before alluded to, were all we got of any value for our services and boats, and we could not have got that but for the personal friendship and sympathy of A. W. McKee for us. *It was a voluntary contribution*, or act of justice; not a payment in pursuance of any contract with the Confederate Government, or any agreement before the services were rendered by us and our boats."

Referring to the contract which they made with A. W. McKee, to move certain cotton for a consideration, to be paid in cotton, bale for bale, Withenbury says, (on page 81:) "I never got any cotton on the contract referred to by McKee."

A. W. MCKEE, (page 68:) "In the latter part of August, 1863, W. W. Withenbury and R. W. Doyle came to me jointly and applied for payment of their accounts for past services required from their steamboats Homer and Vigo, and to ask my advice as to what they should do for the future, to avoid military service, and save themselves the labor of years. I promptly told them that I would answer that. I was aware their names were upon the list of the enrolling officers, and

that they were liable at any hour to conscription; but that if they would accept a contract to transport cotton from the Red to the Sabine River, I would pay them, in cotton, a liberal price, and, in addition, would pay them all back dues coming to them for the so-called Confederate States." * * *

(Page 69.) "The price for the cotton sold to Withenbury and Doyle was bale for bale for all transported under contract; *fifty dollars* ($50) *per bale for amount due upon former services.*"

(Page 54.) Bill of sale for the 935 bales, which recites: "I have this day sold (and delivered the order for) to Messrs. W. W. Withenbury and R. W. Doyle, for and in part consideration of the amount due them from the Confederate States, *for the value of their steamers Homer and Vigo*, and other services of the same, the following described lots of C. S. A. cotton," &c., of which the 935 bales herein involved are part.

5. THE SALE AND PURCHASE OF THE COTTON.

A. W. McKee, (page 137:) "On settlement, in the spring of 1863, there was a balance due them (Withenbury and Doyle) for services rendered under my direction of between eighty and ninety thousand dollars. The larger portion of said balance was due W. W. Withenbury, for services rendered in the winter of 1861 and early spring of 1862, at which time the so-called Confederate States Treasury notes were nearly at par with specie and Louisiana bank money. For these reasons, and those of friendship, which I held toward Withenbury and Doyle, (having been raised with Doyle from boyhood,) I was desirous to see them paid in the manner most agreeable and remunerative to themselves, and as they preferred their pay in cotton, and I had full authority to do so, I settled their account and paid them in cotton, as I have stated before." * * "I made this statement and agreement" * * "about August 22, 1863, at which time I took out of the general pile of vouchers that for the Simmons crops and one or two other smaller lots, and placed them in my private desk, and informed my sub-agents and clerks, Mr. M. M. Roher and Adolph Rachel, that they were set apart for Withenbury and Doyle." * * "From August, 1863, I considered the cotton so set apart for Messrs. Withenbury and Doyle at their risk. Had it been burned by accident, the loss would have been upon them, which I so informed my clerks, that I might have ample witness to my agreement with them."

M. M. ROHRER, (page 52.) He says: "When I informed McKee, on his return from Houston, Texas, that I had turned over to John A. Stevenson, on General Kirby Smith's order, about sixteen thousand bales of cotton, but not having the bill of sale of the Simmons cotton I had not turned it over, he remarked that he was glad of it, as he intended to pay Withenbury and Doyle with that lot." * * * "The above remark of McKee was made in the fall or winter of 1863."

JOHN A. STEVENSON, (page 135,) says: "I got the planters' receipts, delivered to me by Mr. Rohrer, sub-agent, except for some, which *he did not have the receipts to give me.*" * * * "*Among those lots which were on the list, but for which the receipt was not delivered to me, was the Simmons cotton, of some nine hundred and odd bales.*"

RACHEL, (page 112,) who was a clerk in the cotton office of McKee, says that he "knows that said McKee, as agent, did transfer the said nine hundred and thirty-five bales to W. W. Withenbury and R. M. Doyle, in settlement of dues from the Confederate States to said Withenbury and Doyle."

The title papers, viz., the planter's receipt, wherein he acknowledged to hold the cotton for the Confederate States of America, and would deliver it to the holder of the receipt, and the bill of sale, duly executed, were formally transferred to Withenbury and Doyle on the 6th January, 1864. *This was the only sale made of this property* by the custodians of the title, and the sale passed the title to Withenbury and Doyle absolutely.

The Confederate Government paid Simmons for it $50,000 in their securities, for which he realized $50,000 in land and negroes, (See John Ray's testimony, pages 87–88,) thus parting with them at par. The bill of sale, January 6, 1864, shows that Withenbury and Doyle got the cotton for their *impressed boats and involuntary service.*

The only other claimant for this cotton is the French house of G. A. Le More & Co., the evidences of whose claims are very fully examined in the brief filed in their case, No. 265, to which reference is had. They set up, in that record, three antagonistic titles, viz: First, That the cotton was procured from the Confederate Government in exchage for gray army cloth furnished by that house to Kirby Smith's army. Second, That it was purchased in Mexico, from a

Mexican, named Garcea; and third, That it was purchased from a naturalized Frenchman named Queyrouze, for greenbacks,at —— per bale, and Queyrouze got it from the Confederate Government in exchange for other cotton. In neither of these cases is it claimed that the purchase was earlier than in February, and in the last case it is clearly proved that the transaction (if there really was one) took place not earlier than sometime in the month of March, more than two months after the formal transfer of the title papers to Withenbury & Doyle, and fully seven months after the actual sale of the property to them by McKee. But an examination of the evidence will explode their pretended title and show that they were false and fraudulent, having no foundation in fact. But if they were real, they were acquired too late, and are liable to the further objection that these persons had no authority to transfer it, for the title was not in them to dispose of it. But these matters are discussed at considerable length in the brief referred to, and the facts are minutely stated.

6. WITHENBURY AND DOYLE WERE PROMISED PROTECTION BY THE UNITED STATES AUTHORITIES FOR THEIR PROPERTY, AND FACILITIES TO CARRY IT TO NEW ORLEANS, OR INTO THE LOYAL STATES.

1st. The agreement to transport twenty-five hundred bales on United States transports, (see Record, p. 82, for a copy of the agreement,) J. H. McKee, (p. 94, *et seq.*,) and General Banks, (p. 145,) show with much more clearness the consideration which moved General Banks to make this party that agreement. First, he desired to save all the cotton possible from destruction by burning, and Captain Doyle and Captain Withenbury could materially aid him in this. They were familiar with the country, with the people, with the location of the cotton throughout the Red River country, and being loyal men, sufficiently avouched for to General Banks, he might well desire to secure their services and information, and very properly agree to assist them in saving their cotton. Second, he had entered into an agreement a year before with Captain Withenbury, and the bills of sale exhibited to him (so says J. H. McKee) of this cotton, showed that it was the joint property of Withenbury and Doyle.

Independently of the fact that these men were voluntarily rendering the Government valuable services, at a time when it most needed them, for which it was bound in good faith to protect their property, in the absence of an express agreement, nevertheless, under the circumstances thus explained to General Banks, it obviously appeared to him that as loyal men, who had suffered for their loyalty, they were entitled to protection of their persons and their property.

Captain DOYLE (p. 84) says: "I received a permit from Major General N. P. Banks, commanding Department of the Gulf, at New Orleans, to bring out twenty-five hundred bales of cotton from that country. *It was* given for services and information given to him on my arrival at New Orleans, from that country, and also for the services rendered to him by Captain Withenbury, in his expedition to that country in the spring of 1863; he being fully informed as to how the title was acquired. The cotton on the Simmons plantation was included in the said permit.

2d. WITHENBURY (Record, page 77,) says: "General Banks and Admiral Porter, each repeatedly assured me, while on Red River, that all my property and the joint property of myself and Doyle should have the fullest protection in the power of the army and navy to give it. * * * At the very time that the nine hundred and thirty-five bales of cotton on the Simmons plantation and the thirty-four bales on the Maddox plantation were seized and sent to Cairo, by the order of Admiral Porter, I was rendering voluntary and gratuitous services to the navy and army transports."

JNO. M. MARTIN (page 60:) After speaking of what occurred at Alexandria in the spring of 1864, he being there and taking part with the United States navy, he says: "I heard Captain Withenbury tell Admiral Porter that he owned this Simmons cotton on the Ouachita, as well as some cotton higher up the river, *and Admiral Porter promised him assistance to get it out, and told him that, as soon as he could spare a gunboat from his fleet, he would give him convoy to go with a transport to get his cotton.*" * * * Page 61, after detailing the conversation between Withenbury and Porter with respect to the rumor that some United States gunboats had carried off this cotton, he says: "But he, at the same time, gave Captain Withenbury the assurance that, if it proved true that any of his cotton had been taken, it was lucky for him,

as he would certainly get it or the proceeds of it. I was with Captain Withenbury during the interview and heard the conversation as above stated." Again, on pages 61 and 62, he says: "On the 20th day of June, Captain Withenbury, Captain Doyle, and myself went on board Admiral Porter's flag-ship Black Hawk, at Mound City, Illinois, when Captain Withenbury asked the Admiral if he could not do something for him to assist him in taking the Simmons cotton, which was not yet sold. Admiral Porter answered him that the whole matter was out of his hands, as it had been handed over to the United States marshal, and must go through the courts; that, were it in his power to do so, he would give it up to him; that he was satisfied that he and Captain Doyle were entitled to it, and ought to have it. As they were leaving the boat Porter repeated the hope that Captain Withenbury might succeed in getting his pay for the cotton."

See also, page 64, paper B, annexed to Captain Martin's deposition—

"U. S. MISSISSIPPI SQUADRON,
"FLAG-SHIP BLACK HAWK, *March* 19, 1864.

"*To whom it may concern:*

"W. W. Withenbury having taken no part in the rebellion against the United States Government, and having offered no aid or assistance to the rebels, military and naval officers are requested to give W. W. Withenbury's PROPERTY such protection as lies in their power.

"DAVID D. PORTER,
"*Rear Admiral Comd'g Miss. Squadron.*"

Record, page 28. WITHENBURY, after stating the circumstances connected with the taking of his cotton by the gunboats, says: "I immediately went to Admiral Porter and reported to him the taking of my cotton, and showed him the bill of sale before mentioned, *and he told me that if any of my cotton was taken it should be returned to me.* I reminded him that he had given me protection and had promised to assist me in saving my property."

Also, page 29: "The next morning I asked Admiral Porter to give me some writing to the authorities at Cairo for my nine hundred and thirty-six bales of "Simmons" cotton, which I was satisfied had been taken from the plantation where it was stored, on the Ouachita river, and had already gone to Cairo. He wrote me a letter to Captain Pennock,

and promised to assist me in the matter himself, at Cairo, when he should arrive there."

Captain DOYLE (page 85) says: "Captain Withenbury and myself called on Admiral Porter, on board his flag-ship, and stated to him (and showed our bill of sale of the cotton on the Simmons plantation; also, other bills of sale similar to it of cotton on the Red River) that we had cotton on the Simmons plantation on the Ouachita river. *He promised us that as soon as we could get a transport to go for it he would send a gunboat along to convoy it, so that we would be able to get our cotton.*"

J. H. MCKEE (page 96,) says: "That he went to Alexandria with the last forces of Gen. Banks' expedition, and that on his arrival there he met W. W. Withenbury, who was engaged and in the employment of Admiral D. D. Porter, of the U. S. Navy, as a Red River pilot, and was assisting to pilot the United States gunboats over the falls. And further, that on one occasion this deponent went on board Admiral Porter's flag-ship, in company with Captain Withenbury, Captain Doyle, and Captain Martin, while said flag-ship was lying at Alexandria, and he saw Captain Withenbury show to Admiral Porter several bills of sale for cotton from the aforesaid Confederate States of America agents, and heard Withenbury complain to Admiral Porter that some of his men were seizing and carrying on board a boat or barge belonging to Porter's fleet, as prize, a portion of the cotton belonging to Withenbury. The said Withenbury explained at the time fully, to Porter, how he and Doyle obtained this cotton, and Admiral Porter then promised to stop his men from taking any more cotton belonging to the said Withenbury and Doyle, and to give them an order for the redelivery of their cotton then and there taken, to Withenbury and Doyle, upon its arrival at Cairo." * * "And said Withenbury did then and there state to Admiral Porter that he and Doyle owned nine hundred and thirty-five bales of cotton on the Ouachita River, which was stored on the plantation of one Dr. Simmons, where the said nine hundred and thirty-five bales were grown. And the said Withenbury did then produce and show to Admiral Porter the said bill of sale for these nine hundred and thirty-five bales of cotton, which Doyle produced to the deponent in New Orleans, in January, 1864, and which was included in the permit aforesaid, which bill of sale this deponent has fully described

above, and that Admiral Porter did then promise not to interfere with the said nine hundred and thirty-five bales, *but to offer and render the said Withenbury and Doyle all the assistance in his power to get it into the Union lines.*"

"Deponent further states that after the foregoing interview with Admiral Porter, the said Captain Withenbury, *in pursuance with this agreement for the protection of his cotton*, went with General Banks to Grand Ecore, as pilot on the transport on which the General traveled, and on his return to Alexandria, the said Withenbury resumed his duties and services as pilot on Admiral Porter's gunboats, *thus neglecting entirely his private interests.*"

Governor J. MADISON WELLS, (page 100,) after describing Withenbury's energetic action in securing the services of a first-class Red River pilot under circumstances of peculiar interest, says: "The deponent fully believes that in the foregoing matter, as stated, Captain Withenbury has been of great service to the Government, and the means of saving many hundreds of thousands of dollars, and probably of saving the entire army from disaster, as the transports were particularly needed below the lakes in the event of a further and hasty retreat being necessary, or for bringing up supplies to the army in case it remained at that place."

General BANKS, (page 144,) after reciting Withenbury's voluntary offer to aid the Government, says: "His assistance during the campaign of 1863 and 1864 was very important to the Government, and seemed to be dictated by a patriotic consideration for the interests of the country." * * "I gave him a pass through our lines in order to secure his services to the Government, as well as to render him all the assistance in my power to save his property, as I considered him entitled to all the protection for his property that any other truly good loyal citizen could claim."

These promises and agreements on the part of Admiral Porter are fully confirmed by what he wrote at a late day to the Secretary of the Navy. (Record, page 149.) On the 11th May, 1864, he wrote: "In all cases where persons came to me with claims, I either delivered the cotton to them or gave them receipts for it, instructing them how to get it at Cairo without being put to the expense of river transportation." * * Again: "When satisfied they had paid for the cotton I returned it to them, or gave them the necessary documents to enable them to get it."

In the Supreme Court
of the United States.
December Term 1867

Withenbury & Doyle
Appellants,
vs.
United States
} No 112

Brief for Captors.

L. Weldon
of Counsel

IN THE

Supreme Court of the United States,

DECEMBER TERM, A. D. 1867.

THE UNITED STATES
vs.
850 BALES OF COTTON, &c. 788 bales, 52 sacks of Cotton, 409 bales, 139 sacks of Cotton and 1,000 bales of Cotton, Withenburry & Doyle, claimants; 935 bales of Cotton, Griff & Zunts, claimants; 935 bales of Cotton, G. A. Lemore & Co., claimants, and 830 bales of Cotton.

IN PRIZE.

No. 107.

ARGUMENT IN BEHALF OF CAPTORS.

In April, 1864, the United States Navy, in the prosecution of belligerent operations against the forces of the so-called Confederate States, seized on the banks of the Ouachita river, in the State of Louisiana, 910 bales of cotton. The district of country in which the seizure was made was then, as it had been for a long time, subject to the dominion of the so-called Confederate Government, both in a military and political sense. The cotton seized

This brief was prepared in the belief that the record of the consolidated case would be printed together as it was in the Dist Court

was taken on board transports of the United States and brought to the city of Cairo, in the Southern District of Illinois, and reported to his Honor Judge Treat, by the naval commander, as prize of war, and was by the District Attorney, in pursuance of such report libeled in prize. The cotton was raised by Tatum & Simmons near the place of seizure, and sold by them to the Confederate Government in December, 1862, for the purpose of carrying on the war then prosecuted by the so-called Confederate Government against the United States.

The libel was filed in the District Court of Southern Illinois, in May, 1861. By order of the Court a number of seizures and libels were consolidated, and the cotton now claimed by the various claimants in this cause is a part of the consolidated case.

On the 18th of June, 1864, Withenburry & Doyle, citizens of New Orleans and Cincinnati, Ohio, filed in the District Court their claim to 935 bales of cotton which had been seized by the Navy, and which was a part of the consolidated case. (See page 23 50 of printed record.) On the 17th of June, 1864, Griff & Zunts, citizens and residents of the State of Louisiana, filed in said Court a claim for the same cotton. (See page 199 of record.) On the 8th day of September, 1864, Jules Lemore, agent for and on behalf G. A. Lemore & Co., of Havre, France, filed a claim for the same cotton. (See page 136 of the record.) At the September term, A. D., 1865, the District Court of Illinois, after trial and elaborate argument of their respective claims, ordered and decreed that they should be dismissed without determining the question as to whether the proceeds of the cotton (it having been sold by order of the Court) should be condemned as prize. From that decision of the District Court these claimants have appealed the case to this Court.

The cotton, as I have stated, was taken from the banks of the Ouachita river, from the plantation of Dr. Simmons, where it had

been stored or left by the agent of the Confederate Government, for the purpose of being used by such Government, whenever it was expedient to do so. It was marked "C. S. A." and was held subject to the order of the Secretary of the Treasury of the so-called Confederate Government. (See A. W. McKee's deposition, page 196 of record.) From the testimony of A. W. McKee, who had been acting agent of the Commissary Department of the Confederate Government until 1862, when, at the request of the Secretary of the Treasury, he became the general agent of the Treasury Department, this cotton "was originally purchased to assist in carrying out certain financial schemes of the Treasury Department in Europe," and was to be held "in fact, so long as it was safe from the raids of the United States." (See record page 60.) It would seem from the testimony of this agent that this cotton had a peculiar significance and importance in the estimation of the so-called Confederate Government, and was recognized by them as affording hopes for the consummation of financial schemes in the interest of the Confederacy. The character of this cotton, both in the estimation of the Confederate Government and to the knowledge of all persons having any notice of its existence, was well understood. It had been sold by the original proprietor (Simmons) to the Confederate Government; it was MARKED as property of the Confederate Government; was under the control and jurisdiction of agents of the Confederate Government, and its character as belligerent property was well defined and notoriously understood.

I desire to call the attention of the Court more particularly to the claim made by Withenburry & Doyle, who were, at the time of the breaking out of the rebellion and during its continuance, citizens of Ohio.

At the time of filing the claim of these parties, Withenburry claimed to be a citizen of Ohio, and Doyle of the city of New Orleans, Louisiana.

These parties when the rebellion commenced were in the South in the prosecution of their business as steamboat owners and operators, and were compelled, as they insist, to perform service for the Confederate Government, for which, until January, 1864, they received no adequate compensation; and that for the purpose of compensating them for the services rendered to the Confederate Government in the prosecution of its belligerent operations against the United States they purchased of A. W McKee, as cotton agent of said Government, 935 bales of cotton.

It is conceded that these claimants were during the rebellion citizens of Ohio, and it must be conceded that McKee was a resident of the State of Louisiana, which had been in a State of insurrection in fact and in law from some time in September, 1861, until after the seizure of the cotton by the United States Navy.

At the first session of Congress which met after the breaking out of the rebellion, there was passed "An Act entitled An Act "to further provide for the collection of duties on imports and "for other purposes."

Vol. 12, *U. S. Statutes at Large, page* 155.

By the 5th section of said Act it is provided "That it may and shall be lawful for the President by proclamation to declare that the inhabitants of such State, or any section or part thereof, where such insurrection exists are in a state of insurrection against the United States, and thereupon all commercial intercourse by and between the same and the citizens thereof, and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue." The same section also contains this provision: That "the President may in his dis-"cretion license and permit commercial intercourse with any such "part of said State or section, the inhabitants of which are de-"clared in a State of insurrection, in such articles and for such "time and by such persons, as he in his discretion may think

"most conducive to the public interest, and such intercourse by "him licensed shall be conducted and carried on in pursuance of "rules and regulations prescribed by the Secretary of the Treas- "ury" In pursuance of the power conferred upon the President by this Act there was issued by the Executive Department on the 16th day of August, 1861, a Proclamation, declaring "that the "inhabitants of the said States of Georgia, South Carolina, North "Carolina, Virginia, Tennessee, Alabama, Louisiana, Texas, Ar- "kansas, Mississippi and Florida, except the inhabitants of that "part of the State of Virginia lying West of the Allegheny "mountains, and of such other parts of that State and the other "States hereinbefore mentioned, as may maintain a loyal adhesion "to the Union and Constitution, or may be from time to time occu- "pied and controlled by the forces of the United States engaged "in the dispersion of said insurgents, (are in a State of insurrec- "tion against the Government of the United States,) and that all "commercial intercourse between the same and the inhabitants "thereof, with the exception aforesaid, and the citizens and other "parts of the United States is unlawful and shall remain unlaw- "ful until such insurrection shall cease or has been suppressed."

See 12 *Vol. U. S. Statutes at Large, page* ———.

The Act upon which this proclamation was predicated was one intended by the political department of the Government as a means of assisting the military operations of the United States in suppressing the rebellion by destroying all commercial intercourse and all traffic and communication between citizens of the loyal and insurrectionary portions of the United States, as defined by the proclamation of the President. The Act and proclamation issued in pursuance thereof was intended to taint with illegality all contracts and all commercial dealing between persons who were citizens North and South of the line established by the proclamation. It was intended and did suspend during the continuance of the rebellion, all legal right and capac-

ity to contract upon the part of the persons described in said law, during the existence of the rebellion and during the efforts of the United States to suppress the same. Its true intent and meaning is clear and explicit from the language employed in its provision.

1861 The Act of July 13, 1862, was intended "to provide for the collection of duties on imports and for other purposes." The "other purposes" contemplated by the statute was to cripple the commercial resources of the rebellion, and to assist as far as possible in the reduction of the belligerent force then at war with the United States.

Withenburry & Doyle being at the time of their pretended purchase citizens of Ohio, and McKee being a citizen of Louisiana, how is the contract of sale affected by such political relations?

It will be seen by reference to the 5th section of the act of July 13th, 1861, that the word "citizen" is the term employed to designate the persons between whom commercial intercourse is by the policy of the Statute and the proclamation of the President to be illegal; and the fact that Withenbury & Doyle were at the time of this contract temporary inhabitants of the insurrectionary territory of the United States, and had used some diligence to escape therefrom, will not change the effect of their character as citizens of Ohio, and will not remove them from the operation and effect of the law. They were in the South for a temporary purpose and had not changed their political relations with the State of Ohio.

All commercial intercourse between the citizens of loyal and insurrectionary territory, unless licensed by the President and "carried on only in pursuance of such rules and regulations prescribed by the Secretary of the Treasury," being illegal by the law of July, 1861, it must follow as a necessary consequence that no rights of property can be affected by any sale made in violation of the spirit and letter of that law. It expressly declares "All commercial intercourse not within the exception to be unlaw-

ful" Prohibition is the rule and license the exception. The inhabitants of the loyal and disloyal districts are rendered incapable of dealing with each other so long as the rebellion continues. Every contract between them not founded on a license is simply void. It neither passes title nor gives a right of action. It invests the President with power to put the prohibition into operation and define the limits of loyal and disloyal territory. This power thus conferred upon the Executive was exercised by the issuing of the proclamation of August 16th, 1861, and from the date of its promulgation the prohibitory policy of the statute upon which it was founded had the force of positive law. It is unnecessary to argue that a contract made in violation of not only public policy but the clear and express will of the Legislature, is void as a contract and can confer no right. This principle is founded upon public policy, statute, and common law. If, then, the contract between Withenburry and Doyle and the Confederate agent was within the prohibition, it was an act of commercial intercourse and is void.

As to the character of these parties being citizens of loyal and disloyal territory at the time of the pretended purchase, there can be no question. The claim of Withenburry shows that he is still a citizen of Ohio, while that of Doyle shows that he was a citizen of Louisiana at the time of filing the claim—but the proof shows that at the time of pretended purchase they were both citizens of Ohio. p 84

From A. W. McKee's deposition, (page 65,) he was not only the agent of the so-called Confederate Government, but was clearly a citizen and an inhabitant of the State of Louisiana, which, at the time of the contract, by not only the proclamation of the President but by the actual state of war, was a part of the insurrectionary territory of the United States. It was a State then in the hostile and belligerent possession of the so-called Confederate Government.

It the claimants were not citizens of Ohio, so as to come within the spirit of the Act of July 13, 1861, but were relieved from the condemnation of that statute in consequence of their residence in the hostile territory, what *was* their legal status? It has been held by this Court in the case of Mrs. Alexander, in

2 *Wallace, page* 404.

"The principle that personal disposition of the inhabitants of "enemy territory, as distinguished from those of the enemy people "generally, cannot in case of capture be enquired into, applies to "civil wars as well as in international. Hence, all the people of "any district that was in insurrection against the United States "in the Southern rebellion, are to be regarded as enemies, except "in so far as by the action of the government itself, that relation "may have been changed."

This being the law, as established in a case analagous to the one at bar, determines the legal right of these parties if they are to be regarded *not* as citizens of Ohio under the act of Congress. They must be held to have had a domicil in the South. They were a part of the people of a district of country in insurrection against the United States, and upon the principle laid down in the case cited must "be regarded as enemies." Chancellor Kent, in his chapter on the law of nations, says: "If "a person resides in a belligerent country, his property is liable "to capture as enemies' property, and if he resides in a neutral "country, he enjoys all the privileges, and is subject to all the "conveniences of neutral trade."

1*st Kent, page* 76.

Withenburry & Doyle were either citizens of Ohio at the time of their pretended purchase and within the law of July, 1861, or they were inhabitants or residents of "enemy territory" and their property liable as enemies by virtue of the principle enunciated in 2 *Wallace* and laid down by Chancellor Kent.

" The doctrine of enemy's property arising from a domicil in " an enemy's country, is enforced strictly and equitable qualifica- " tions of the rule are generally disallowed for the sake of pre- " venting frauds on belligerent rights and to give the rule more " precision and certainty."

1*st Kent, page* 79.

Personal loyalty will not affect the right of capture and condemnation if the party reside in " enemy territory," nor will the fact that the party was compelled to stay in such territory to save his property change the right of the capturing belligerent.

The consideration upon which the sale from McKee to Withenburry & Doyle is in itself illegal. The services rendered by them were services in assisting the military operations of the Confederate forces, and every act which they did, entering into and making a part of the consideration upon which their purchase was based, was not only illegal but treasonable in its character. We have then presented in this case a claim to property which has been purchased, as we insist, not only in violation of public policy and the statutes of the United States, but which has been purchased for a consideration illegal in its character. It cannot be insisted in this case that there was any license granted by any authority of the United States to make this purchase. The communication of the claimants, Withenburry & Doyle, was not with the United States but wholly with the enemies of the United States, and in such relation to those enemies as is well calculated to excite suspicion against the claim which they now make to the proceeds of this cotton.

In order to maintain the title of Withenburry & Doyle it is necessary to enforce the contract between them and the Confederate agent in relation to the pretended purchase of the cotton.

" If the contract grows immediately out of or is connected with " an illegal or moral act, a court of justice will not enforce it. '

Toler vs. Armstrong, 4*th Wash., C. C.* 297.

11*th Wheaton*, 258.

2*d Parson's Cntracts*, 260.

The pretended sale of the cotton by the Confederate agent to these claimants, was an agreement between two persons, enemies of the United States, and in fraud of the right of the United States, and cannot be maintained so as to pass the title of the property.

Hannaway vs. *Eve.* 3. *Cranch.* 242.

I desire to call the attention of the Court to an Act entitled "An Act to confiscate property used for insurrectionary purposes," *page* 317, 12*th Vol. United States Statutes at large.* It is provided in this Act "if any person or persons being the owner or owners "of property shall knowingly use or employ, or consent to the "use or employment of the same for the purpose of aiding the "rebellion, all such property is declared to be lawful subjects of "prize or capture wherever found, and it shall be the duty of the "President of the United States to cause the same to be seized, "confiscated and condemned."

This property was, as I have stated, notoriously the property of the Confederate Government. It had been sold by the original proprietors in November or December, 1862, to the agents of the Confederate Government, and it was held by such Government (until the pretended sale to Withenburry & Doyle,) "to carry out certain financial schemes of the Treasury Department, in Europe." In has been said by this Court, in the case of Mrs. Alexander, in 2 Wallace, page 404, the cotton in "the Southern rebel districts, "constituting as it did, the chief reliance of the rebels for means "to purchase munitions of war, and an element of strength to the "rebellion, was a proper subject of capture by the Government "during the rebellion, the general principles of public law re-

"lating to war, though private property, and the legislation of "Congress during the rebellion, authorized such captures."

In the case of Mrs. Alexander, the Court held that private property belonging to persons living in the insurrectionary districts was liable to capture, and its condemnation was justified by legislation as well as by public policy. In that case Mrs. Alexander had not contributed, by her sympathy or by her act, as effectually to the cause of the rebellion as Withenburry & Doyle.

The act of Congress to which the attention of the Court has been called, passed on the 6th of August, 1861, provides that "All property employed in aid of the rebellion, with the consent "of the owner, to be lawful subject of prize and capture when-"ever found." This property was not only used to aid and assist the rebellion but it was emphatically the property of the enemy then at war with the United States. Its character as such was not concealed—it was marked "C. S. A.," clearly indicating its ownership and jurisdiction. It was SOLD and BOUGHT as the property of the Confederate Government, by one who had rendered service to the Confederate Government in assisting them in the prosecution of the war. If it can be maintained as sound legal philosophy that the title of the United States does not attach and inhere until seizure and condemnation, that theory can be maintained ONLY for the benefit and protection of innocent purchasers. It is not to be maintained to reward treason and to consummate the plan between Withenburry & Doyle to get this cotton either through Federal or Confederate lines. Sound legal philosophy, public policy, nor the protection of innocent private rights do not require the doctrine of seizure and forfeiture (as being necessary to originate title) to be carried to any greater extent than to have it so applied that innocent parties dealing in respect to the subject matter without notice of its illegal and

tainted character, may not be prejudiced by any latent and unknown defect.

The property at the time of the pretended sale by McKee to Withenburry & Doyle, had stamped upon it all the requisites in law necessary to insure the successful condemnation of it under and by virtue of the provisions of the act of August 6, 1861. These requisites were known to Withenburry and Doyle; they purchased it as Confederate property, from a Confederate agent for illegal and treasonable services rendered to the Confederate army. I am unable to perceive upon what ground of municipal law or moral right these parties can successfully predicate a claim to this property. They bought from a faithless agent of a rebel Government, in violation of municipal law and public policy, for an illegal consideration, a thing which the rebel Government had no right to sell. This, to my mind, is a logical statement of the claim of title by which they now seek the decree of this Court for the restitution of the proceeds of this cotton.

The cotton was purchased from Dr. Simmons, the original proprietor, in November or December, 1862, by the agent of the so-called Confederate Government, (record, page .) The object of the purchase, both by the vendor and vendee, was to "aid, abet and promote" insurrection against the authority, and to resist the laws of the United States. By the sale of this cotton to the so-called Confederate Government, Simmons knowingly used and employed it for the purpose of "aiding, abetting and promoting" an insurrection against and resistance to the laws of the Federal Government.

Under the act of August 6th, 1861, it was the duty of the President to cause the seizure of all property used to assist the rebellion, if the same was used to the knowledge and by the consent of the owner, and the President, by and through the agency of the gun-boats, did seize the cotton in question. The gun boat service was directed, in theory at least, by the President, as Com-

mander in Chief of the Army and Navy of the United States. If the so-called Confederate Government was capable of holding property during its power as a belligerent, this property became amenable to the condemnation of this statute, so soon as by the act of the original proprietor it was transferred to the control and jurisdiction of that belligerent. Withenburry & Doyle were not innocent purchasers They had full and complete notice of all the legal and moral delinquencies of the property which they purchased from McKee.

This statute was passed at the extraordinary session of 1861, which, as the Court have said in 2 *Black.* 670, "was wholly employed in enacting laws to enable the government to prosecute the war with vigor and efficiency." It is emphatically a war measure, and should be so construed as to give it the greatest efficiency as such. There being no legal capacity on the part of McKee and Withenburry & Doyle to contract, because of the prohibition of the statute of July 13, 1861, the property in the cotton must have been in the belligerent at the time of seizure. If so, what follows: "The right of one belligerent not only to coerce the "other by direct force, but also to cripple his resources or destruc- "tion of his property is a necessary result of a state of war. "Money and wealth, the product of agriculture and commerce, "are said to be the sinews of war, and necessary in its conduct "as numbers and physical force."

2 *Black. page* 671.

It was as much the duty of the Navy to capture and seize cotton, as it was to destroy the numbers and physical force of the rebellion.

Its means "to carry out certain financial schemes of the Treasury Department in Europe" were destroyed by the capture of this cotton. At the time of seizure it was in the same place and condition as it was when it is pretended that McKee sold it to Withenburry & Doyle, and the power and control of the belligerent

could have subjected it to its purposes, notwithstanding the "very honest" endeavor of McKee to discharge the obligations of his principal.

This cotton, because of its ownership prior to the pretended purchase by these parties, and by the act of the parties themselves, "comes within the spirit if not within the letter" of the act of August 6, 1861.

Mrs. Alexander's Cotton, 2 *Wallace*, *page* 420.

This property, at the time of its seizure, was not and never had been in possession of these claimants, and it may well be doubted whether, according to the requirements of the common law, there was any right of property passed from McKee or the Confederate Government to Withenburry & Doyle.

(On page record,) McKee testifies that "in the latter part of August, 1863, Withenburry & Doyle came to him, jointly, and applied for payment of their accounts for past services of their steamboats, and to ask the advice of the witness as to what they should do to avoid military service, and save themselves the labor of years." In order to accommodate Withenburry & Doyle, in the payment of their past dues, and to relieve them from the duties of the soldier in the Confederate army, McKee proposed to them that if they would accept a contract to transport cotton from the Red to the Sabine river, he would pay them in cotton a liberal price, and in addition would pay them all dues coming to them from the so-called Confederate States. The claimants then informed this agent of the Confederate Government of some private arrangement they had with General Banks, made in the May preceding, to the effect that Withenburry was to remain within the Confederate lines for the purpose of saving his property; and they then stated to McKee that under the circumstances they would accept a contract to move cotton, which would relieve them from military service and keep them in the neighborhood of Alexandria, provided, he (McKee) would keep "in tact" certain lots of cotton

lying upon the Red and Ouachita rivers, for past and future services, but which was not to be exempted from burning until they furnished certain evidences from General Banks of their right to transport cotton into the Federal lines. This agreement thus commenced in 1863, was finally consummated, as they insist, by the execution of a certain bill of sale, dated Alexandria, January 6th, 1864, and referred to in the deposition of Milton Rohrer, on page 54 of the printed record By that bill of sale it will be seen that A. W. McKee simply proposed "to deliver orders for," but not in fact deliver the cotton to Withenburry & Doyle. There is no evidence in the record showing that Withenbury & Doyle either by themselves or by an agent ever took possession of the cotton It was not weighed, the bales were not counted, and the property was not identified and set apart as the property of Withenburry & Doyle, under the contract.

In the case of Mrs. Alexander, *page* 420, 2 *Wallace*, it was held that because she had contributed to the erection of Fort De Russey, after the passage of the act of 1862, that she came within the spirit, if not within the letter, of not only the act of July 17, 1862, but also within the letter of the act of August 6th, 1861. By the *Act of July 18th*, 1862, *Sec.* 6, *page* 591, 12*th volume United States Statutes*, it is provided that, "if any person, "within any State or Territory of the United States, other than "those named as aforesaid, after the passage of this act, being "engaged in armed rebellion against the United States, or aiding "or abetting such rebellion, shall not, within sixty days after "public warning and proclamation duly given and made by the "President of the United States, cease to aid, countenance and "abet such rebellion, and return to his allegiance to the United "States, all the estate and property, moneys, stock and credit of "such person shall be liable to seizure, and it shall be the duty of "the President to serve and use them as aforesaid, or the pro-

" ceeds thereof, and all sales, transfers or conveyances of any such " property, after the expiration of the said sixty days from the " date of such warning and proclamation, shall be null and void, " and it shall be a sufficient bar to any suit brought by such per- " sons for the possession or the use of such property, or any of it, " to allege and prove that he is one of the persons described in " this section."

In pursuance of the authority vested in the President by said act, on the 25th day of July, 1862, he issued a proclamation as follows, to-wit: " In pursuance of the 5th section of the Act of " Congress, entitled ' An Act to suppress insurrection and to " punish treason and rebellion, to seize and confiscate the property " of rebels, and for other purposes,' approved July 17th, 1862, " and which act and the joint resolution explanatory thereof, and " herewith published, I, Abraham Lincoln, President of the " United States, do hereby proclaim to, and warn all persons " within the contemplation of said sixth section, to cease partici- " pating in aiding, countenancing, or abetting the existing rebel- " lion, or any rebellion against the Government of the United " States, and to return to their proper allegiance of the United " States on pain of the forfeitures and seizures as within and by " said 6th section provided." I submit to the Court that under and by virtue of the act of July, 1862, and the proclamation based thereon, that this property was not a subject of legal sale by Simmons at the time McKee states that through his agent, Young, he purchased the cotton from Simmons. The sixty days limitation of the statute expired on the 21st day of September, 1862. This cotton was bought by Young from Simmons, in November or December, 1862, (see page of record) which was at least two months after the expiration of the sixty day limitation of the statute and the proclamation of the Preaident

If it be conceded that Simmons was capable in law to transfer title to the property in question, notwithstanding the statute of August 6, 1861, and the act of July 17, 1862, to whom did that title pass?

It must have passed to A. W. McKee, who was then acting as the representative of the belligerent force, in the purchase, control and disposition of cotton. He was the immediate representative and confidential agent of the Secretary of the Treasury, who was commanding the cotton department from his financial office in the city of Richmond. A. W. McKee accepted and held an important official position from the government of the Confederate States after the passage of the act of July, 1862, and the promulgation of the executive proclamation. And he continued to hold that position when he transferred the property in question. The estate was therefore strictly applicable to him and the property. Instead of returning to his allegiance, as required by the proclamation of the President, his efforts were directed to the preservation of this cotton, in order that it might afford the basis "of certain financial schemes in Europe," in the interest of the Confederacy. His life was devoted to the open, flagrant, and belligerent violation of this statute; and his highest ambition was to impiously disregard the admonition of this proclamation. The statute expressly declares, "all sales, transfers, or conveyance" of property, made by a person who aids or abets the rebellion after the limitation, to be void. In this state of case, it is very clear that the claimant acquired no title. Their purchase was simply void, because A. W. McKee had no legal capacity to dispose of the property.

But we also insist that this statute operated on this property antecedent, to its possession by McKee. It was, and became forfeited in the hands of Simmons.

Samuel M. Todd, on page 102 record, states that Dr. Simmons was a resident of the parish of Ouachita, but whether he was

loyal or not to the United States the witness is unable to state John Ray, in his testimony, page record, states that simmons, immediately after the purchase of this cotton from the Tatmu heirs, which was in the latter part of 1862, proceeded to sell between 900 and 1000 bales of cotton to the agents of the Confederate Government, Dr. Young, who was acting as a subordinate to A. W. McKee.

This cotton, by the act of Simmons, was intended to aid and assist the Confederate Government in carrying on its military operations against the United States, and by the sale for that purpose Simmons committed an act of disloyalty, as against the spirit of the act of 1862, and the proclamation of the President, and by that act then and there refused to return to his allegiance to the United States.

This sale by Simmons to the Confederate agent took place after the expiration of sixty days from the issuing of the proclamation, and is therefore null and void, so far as it could otherwise operate in the transfers of title from Simmons to McKee, or Young, acting as the agent of the Confederate Government. If, then, this sale under, and by virtue of the law of July, 1862, was in itself a nulity it conferred no title upon Young, McKee, or the Confederate Government, and they having no title by such sale could not afterwards impart to Withenburry & Doyle any title to the property. Withenburry & Doyle, by the bill of sale, simply succeeded to whatever rights their vendor had in the property, and if their vendor had no title Withenburry & Doyle took no title.

It is not necessary for the testimony to disclose any affirmative disloyalty on the part of Simmons, the original proprietor of the cotton, when it is one of the notorious facts of this case that after the limitation prescribed by the proclamation he recognized the Confederate Government and sought to assist it by attempting to transfer to it the possession of, and title to cotton, which

might become the "basis of certain financial operations," as was afterwards claimed by A. W. McKee. The sale itself is an act of personal affirmative disloyalty, and brings Simmons within the letter and spirit of the law of July, 1862, and the proclamation of the President, which makes null and void all transfers and attempted sales of property.

This is a suit or proceeding founded upon an act done in violation of the law of July 17, 1862, the act itself being by the law null and void, the parties cannot succeed in maintaining title under it.

If treason is not punished it should not be rewarded. This cotton, from the time it became the property of McKee or the Confederate Government, until its capture, was one of the means by which the credit and hope of the Confederate cause was sustained, and the taking by the United States navy was one of the many ways in which that credit and hope was to be destroyed. Cotton, as the Supreme Court have aptly said, was "an element of strength to the rebellion," and as you diminish by capture and seizure that element, you thereby diminish the magnitude and strength of the rebellion. This cotton, at the time of seizure, belonged to the Confederate belligerents, if it had any ownership adverse to that of the United States, and it being captured by the enemy of that organized belligerent, it became the property of its captors. If the act of August 6th, 1861, was intended and did operate on private property used to ~~resist~~ assist the rebellion, can it be successfully maintained that the property of the rebellion itself can by any possibility escape the condemnation of that statute? Withenburry & Doyle are not innocent purchasers, without notice, if it be conceded that the Confederate agent had the legal power and right to hold property. In the prize cases reported in 2 Black., page 636, the court held that "the present civil war between the United States and the so-called Confederate States, has such character and magnitude as to give the United States the

same rights and powers which they might exercise in the case of a national and foreign war." And also "that all persons residing within the territory occupied by the hostile party in this contest are liable to be treated as enemies, though not as foreigners."

If this capture had been made in a "national foreign war," can it be said that the proceeds of it would be restored to one whose claim rested solely on the foundation that he had purchased it from the enemy in consideration of military services rendered to that enemy in the prosecution of the war against the captors? This question is susceptible of but one answer. But it is contended in this case that Withenburry & Doyle were compelled by the exercise of superior force to yield obedience to the reqnirements of a *de facto* government. If this is true to the extent claimed by these parties, it will not answer the objection to their title as affected by the laws heretofore suggested.

It may be insisted that the permission received from General Banks by Withenburry & Doyle to remain within the Confederate lines for the purpose of taking care of their property, was an au. thority sufficient to take the act of Withenburry out of the operation of the statute of July 13th, 1861. It will be seen by reference to the proviso of that act, that it is the President, and not a subordinate commander, who has authority to grant license to trade with the inhabitants or citizens of the insurrectionary districts, "under and in pursuance of such rules and regulations as may be prescribed by the Secretary of the Treasury." There is no pretense on the part of these claimants that they have any authority from the President, to be pursued by them under rules prescribed by the Secretary of the Treasury. This law, by its plain provisions, circumscribes the exercise of the license power to the President himself, and does not authorize, either by its letter or the policy of its enactments, a delegation of that power to the commanders in the field.

Whatever may have been the circumstances under which these parties were compelled to perform services for the so-called Confederate Government, we insist that while the exercise of such a force by the Confederate Government may entitle them to protection against the criminal consequences of their act, it does not confer upon them the right to purchase property in violation of the laws and public policy of the United States.

In my view, it is almost unnecessary to call the attention of the Court to the moral indications of this case, so far as the acts of these parties are concerned. It is insisted by them that the rebellion found them with their property within a revolutionary district, and that they were compelled to stay in that district by reason of the threats and despotic dominion of the Confederate Government. The good faith of this theory is destroyed when it is shown that these parties not only stayed in the insurrectionary districts during the control of the Confederate Government, but they remained there after the possession of it by the United States, and voluntarily returned within the Confederate lines in May, 1863. Record, pages 9798 General Banks, on page 98 states that he did not request Withenburry to remain after the army evacuated the Red River country, but that Withenburry remained because it was consistent for his interest to do so, and was not inconsistent with the interest of the United States. The General also states that in the campaign of 1863 and 1864, Withenburry rendered some service to the United States "which seemed to be dictated by a patriotic consideration for the interest of the country." It is very clear, from the glowing terms in which General Banks speaks of the virtues of Withenburry, that he has been overreached by the "smooth dissimmulation" of that patriotic citizen of Ohio, who chose to remain during the whole war in Louisiana, rather than to return to his home.

It is also clear from the deposition of McKee [68] that by the contract which Withenburry & Doyle made with him in

the year 1863, that they violated the confidence reposed in Withenburry by Gen. Banks, in May preceding. During the pendency of the making of the contract for the removal of cotton southward, by Withenburry & Doyle, in 1863, they "confidentially" told McKee that they had been permitted to return within the Confederate lines, in order that they might "save their property and be better prepared to render information to Gen. Banks, upon the return of the Federal forces.' How is it that Withenburry, who, as he insists, had remained to save his property, should disclose to an officer of the Confederate army that from May, 1863, he was remaining within Confederate lines as a spy for the Federal cause? Then for the first time in the history of this transaction these parties agree upon the terms of what they insist is a valid and legal purchase of this cotton. McKee, Withenburry & Doyle then become faithless to the interest which they assumed to represent, the one by confiding in the communications of a Federal spy, the other by agreeing to perform a contract in relation to the transportation of cotton, in violation of the spirit of the understanding with which by the consent of Gen. Banks, they were permitted to return into the lines of the enemy. [See page record] Why has McKee become the confidential companion of Federal spies? Why has he, as the agent of the so-called Confederate Government, become solicitous that past, present and future claims upon his principal shall be punctually paid? There is but one answer to these questions, and that is, that McKee, Withenburry & Doyly then and there formed a conspiracy, the purpose and object of which was to escape with cotton, either through Confederate or Federal lines, as the opportunity of the occasion might afford. For the purpose of fully comprehending the nature of this transaction, I call the attention of the Court to the testimony of McKee, pages 67 & 68

Withenburry, who has been, as will be seen by the evidence, the principal man in the transaction of the purchase of the cot-

ton, was on the most intimate and confidential relations with not only the Confederate agents but with Federal officers. He was alike the confidential companion of both Confederate and Federal, and was prepared in the protection of his property for the dominion of either.

Withenburry had interviews ...General Banks, in which he assured the General that he could render very efficient services if he was permitted to remain in the insurrectionary territory, and the whole proof in the case discloses that these claimants were ready and willing to acquiesce in Confederate or Federal rule as best suited their purposes of gain. They nowhere exhibit, in what they did during the time they stayed in that revolutionary district of country, an honest desire and purpose to return to their homes in Ohio and escape from the power of the Confederate Government, to which, for the sake of their property, they say they yielded an acquiesence. In doing what they did in aiding and assisting the rebellion, whatever equities they have is against the enemies of the United States, and not against that power and that Government which for years their toil and labor attempted to destroy. They come into this Court asking to be paid the price of their fidelity to the Southern Confederacy. They are asking the decree of this Court for the proceeds of property, which, according to the legitimate purpose and operation of these statutes, had become forfeited to the Government of the United States, They are asking this Court to determine, by solemn adjudication, to live through all history, that men's patriotism is measured solely by the extent and protection of their property. There is some charity for men who from the result of honest but mistaken conviction, raised the standard of rebellion against the constituted authorities of their Government, but the man who is driven to acts of flagrant disloyalty solely for the purposes of gain is entitled to no respect or charity.

The question in this court is not whether this property is to be condemned as prize of war, but whether any of these claimants are entitled to the payment of the proceeds. In determining this question, so far as Withenburry & Doyle are concerned, we deny the legal competency of the testimony of these parties, whether the same be taken in the form of statements or depositions. The statements are not to be considered for the reason that they are ex parte, and if permitted to form any part of the record they can have no greater force than denials of the allegations of the libel. The deposition is not competent testimony, for the reason that the late law of Congress upon the subject of evidence does not by its terms apply, and was not by its enactment intended to apply, to a prize case. This is a proceeding "in rem" to enforce forfeiture and penalty, and does not fall within the scope of the term "civil case." It is a source of regret that the life of Mr. Eames (he being the original counsel for captors,) was not spared in order that he might enlighten the issue of this case from the resources of his great and varied learning, and his very intimate knowledge of the principles of public law which are applicable to the late rebellion. I have not argued the rights of the other claimants, but have left them to the consideration of the able gentlemen who represent the Government.

L. WELDON,
Of Counsel.

J. Hubley Ashton
of Counsel

In the Supreme Court of the United States.

DECEMBER TERM, 1867.

WELLINGTON W. WITHENBURY AND ROSS W. DOYLE, claimants of 935 bales of cotton, appellants,

vs.

UNITED STATES. } No. 112.

ARCHIBALD D. GRIEFF AND JAMES E. ZUNTS, claimants of 935 bales of cotton, appellants,

vs.

UNITED STATES. } No. 246.

Appeals from the District Court of the United States for the Southern District of Illinois.

THE CASES.

The appellants here are, respectively, claimants below of certain cotton, which was the subject of naval capture in April, 1864, on the plantation of John T. Simmons, on the east bank of the Ouachita

river, in the parish of Caldwell, Louisiana. The claims which were interposed were for 935 bales, though the cotton actually captured on that plantation and brought within the jurisdiction of the District Court, consisted only, as it would appear, of 910 bales.

A portion of this cotton (330 bales) was also claimed in the court below by the firm of G. A. Le More & Co., alleged French subjects domiciled at Havre, who are also appellants in this court. (No. 107.)

The several appeals are taken from the decree of the District Court, pronounced on the 6th of November, 1865, dismissing the respective claims at the cost of the claimants.

As it is understood that G. A. Le More & Co. propose to dismiss their appeal, it will be necessary, in this brief, to invite the attention of the court mainly to those considerations of fact and of law upon which the United States ask that the decree of the District Court dismissing the claims of Withenbury & Doyle, (No. 112,) and Grieff and Zunts, (No. 246,) may be affirmed by this court.

GENERAL STATEMENT OF THE CLAIMS.

I.

It is admitted by the claimants, and, indeed, proved by them, that in the latter part of December, 1862, all the cotton embraced by their respective claims became, by purchase, the property of the Rebel Government, under the following circumstances:

(*a.*) The cotton was grown on the plantation known as the "Hopewell" or "Simmons" plantation, on the east bank of the Ouachita river, about 22 miles from

the town of Monroe, Louisiana, then owned by Dr. John T. Simmons and the heirs of E. P. Tatum.

It appears that on the 25th of December, 1862, an amicable agreement was entered into between those parties, by which Simmons acquired the sole and exclusive ownership of the plantation and the personal property thereon, upon assuming the payment of all the debts of the late firm of Tatum & Simmons, and paying the heirs of E. P. Tatum the sum of $50,000 in Confederate bonds or Confederate treasury notes. It was further agreed that this sum should be raised by Simmons by a sale to the rebel government of as much of the cotton stored on the plantation as might be necessary for that purpose.

In execution of this agreement, Simmons soon after effected a sale of 935 bales of this cotton to one C. G. Young, acting on behalf of the Rebel Government, and received therefor from the Secretary of the Rebel Treasury, C. G, Memminger, at Richmond, about $50,000 in eight per cent. coupon bonds of the so-called Confederate States, which amount he paid over to the heirs of E. P. Tatum, pursuant to the agreement mentioned.—(Record No. 107, pp. 50, 96; Record No. 112, p. 67.)

The bales were divided into two lots, marked by the rebel agent respectively "*Tatum & Simmons, C. S. A.*," and "*Simmons, C. S. A.*," and two memorandums of sale and delivery, respectively, for 811 bales and 124 bales, executed by Simmons in favor of the "Confederate States of America," containing an agreement in the usual form, on the part of the seller, to retain the property on his plantation, subject to the order of the "Secretary of the Treasury or his agents, or their assigns," and the usual certificate at the bottom

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of the memorandums of the rebel purchasing agent, C. G. Young, that the cotton was of the amount, weight, and quality described, and safely stored in a proper building —(Rec. No. 112, p. 66; Rec. No. 246, p. 44.)

These documents of title, described as "very full and complete, being bill of sale, receipt for payment, and more fully binding upon the seller as custodian, and as to prompt delivery of the cotton, than the common form of a warehouse or storage receipt," were deposited in the office of the "COTTON AGENCY," at Alexandria, presided over by one A. W. McKEE, assisted by his sub-agent, the C. G. Young before mentioned.—(Rec. No. 112, p. 67; Rec. No. 246, p. 44.)

Thus "no act was left undone to pass the title of the cotton from the seller to the so-called Confederate States," and the cotton was left in the custody and keeping of the seller, J. T. Simmons, under an agreement to deliver it whenever called for by the order of the Secretary of the rebel treasury and his agents, or their assigns.—(Rec. No. 112, p. 67.)

(*b.*) As the transactions of this "COTTON AGENCY" at Alexandria, and the powers and relations of its chief, A. W. McKee, are important elements in these cases, it may be well to give here and now some general account of them.

The "Cotton Agency" was established at Alexandria, in September, 1862, by C. G. Memminger, rebel Secretary of the treasury, by the appointment of one Andrew W. McKee, as general agent of his Department, for the purchase of cotton in Texas and in Western Louisiana, for the use of the Rebel Government, in carrying out "certain financial schemes of the

treasury department, in Europe;" and all cotton actually purchased through the agency was subsequently "*pledged*," as we are told, to carry out those schemes. (Rec. No. 112, pp. 66, 176.) The history of this man McKee is fully given in these records, and it is a very discreditable one. He began his traitorous carreer in September, 1861, as an agent of the rebel commissary department in Texas. In the fall of 1862, he repaired to Richmond, resigned that office, and accepted from Memminger an appointment as cotton agent, with the authority and duty just mentioned. He established his agency at Alexandria, and engaged in the business of purchasing cotton on behalf of the rebel treasury department, for Confederate bonds or currency. (Rec. No. 112, pp. 55, 56 *et seq.*) The course and methods of the business were such as occurred and have been mentioned, in the case of the purchase, in December, 1862, of the "Simmons and Tatum cotton." The cotton was selected by his sub-agent, C. G. Young, paid for by McKee, and "certificates of sales taken in duplicate upon partially printed forms furnished from Richmond, printed upon good foolscap or same size paper, with blank places for the detailed weights, marks, numbers of bales, price, amount, &c.; also seller's name for receipt of payment, and agreement to remain the custodian, and deliver the cotton when drawn for in good shipping order, at his own expense, at the usual shipping point, also place for certificate and signature of the agent or his assistant." (Record No. 112, p. 67.) His authority and duty in this office, were limited. They were confined to the purchase of this cotton, attention and care to the proper storing of it, and the preservation of the cer-

tificates of sales or evidences of title, which involved the incidental duty of reporting his operations and transmitting the contents of the certificates or invoices, to the rebel treasury department for record on the books of the "produce loan office," of which his agency seems have been a part; all the cotton thus obtained and held by him being dedicated to the financial uses of the rebel treasury, and the intended basis of its loans negotiated in Europe. (Rec. No. 112, p. 176.)

On September 28, 1863, he was ordered by the rebel Secretary to report to the military authorities of the trans-Mississippi Department, commanded by the so-called General E. Kirby Smith, with headquarters at Shreveport, and to receive instructions from them in all matters relating to the preservation, destruction or removal of the treasury department cotton, when in danger of falling into the hands of the Union forces. These instructions were given after, and in consequence of, the establishment by E. Kirby Smith, in August, 3, 1863, of a Cotton Bureau within and for his military Department, which embraced the cotton agency of McKee, and the appointment of one of his subordinate officers, W. A. Broadwell, as the chief of that Bureau. McKee, and all government agents for the purchase, collection and other disposition of government cotton were directed in the order of General Kirby Smith, establishing this cotton bureau to report to and receive instructions from Broadwell. (Rec. No. 112, pp. 175, 176.) This was regarded by the rebel Secretary of the Treasury as a purely military measure of necessary and prudent precaution, looking to the safety and protection of the government cotton, by its removal to a place of greater

security, or by its destruction, should such removal be impossible, when in danger of coming under the control of the United States forces. As the military authorities were better advised on all occasions, and were more competent to judge always, of the necessity and expediency of such removals or destructions of property than the civil agents of the treasury department, Memminger authorized McKee, as has been stated, on September 28, 1863, to report to, and receive instructions from, this military cotton bureau, simply and exclusively with reference to the preservation or destruction of the government cotton, or its removal beyond the reach of the enemy. But Memminger, it is perfectly clear, did not confer, or purport to confer, on this military cotton bureau of Kirby Smith, or any of its officers or agents, any authority to tranfer, or otherwise dispose of cotton in the hands of the treasury purchasing agents, by recognizing the right of that bureau to remove or destroy such cotton when in a particular predicament of danger; and it is equally plain that he designed to confer no such power of disposition upon McKee, his chief purchasing agent, by authorizing him to obey the instructions of the military cotton bureau relative to the removal, preservation or destruction of the treasury cotton which might be, from time to time, in such predicament of danger. Nor could the purchasing agent, McKee, and any officers of the Kirby Smith cotton bureau, combined, by their joint consent or agreement, under and by virtue of any instructions of the rebel Secretary, in evidence in these cases, lawfully dispose of the cotton purchased on account of the treasury department, and held for the financial uses of that department.

We will see, when we come to discuss the facts of the cases, what power of disposing of the cotton was usurped by the military authorities of the trans-Mississippi department, and what interpretation McKee placed, or purported to place, upon the instructions received from the rebel Secretary, directing him to report to the military authorities in all matters relating to the preservation of the cotton under his control. It would seem, from all we learn from these records, that the transactions of McKee in that cotton, on both sides of the lines, deemed corrupt and traitorous by the rebel officers, brought him before a rebel court-martial, on sundry charges of corresponding and unlawfully trading with the enemy, and embezzling public property, &c. He was found guilty and sentenced to be shot—a fate from which he was rescued by *habeas corpus* from a civil court, on the ground that not being in the military service, the court martial had no jurisdiction to try and condemn him to death.

II.

The cotton, which is the subject-matter of these proceedings, having thus become, in December, 1862, the property of the Rebel Government, and having passed into the custody and possession of its agent, A. W. McKee, it is claimed by Withenbury & Doyle, that the same was lawfully sold and delivered to them, on January 6, 1864, by McKee, for and in consideration of certain services antecedently rendered by them to the Rebel Government.

(*a*) Both of the claimants, Withenbury & Doyle, were, at the time of the alleged sale and at the time of the capture of the cotton, citizens of the State of

Ohio; while McKee was a citizen and resident of that part of the State of Louisiana then in a condition of insurrection against the United States. (Rec. No. 112, pp. 25, 36.) These claimants were respectively the owners and masters of two steamboats, and, while retaining their domicils in Ohio, were engaged, for several years prior to the rebellion, in navigating with their boats the Red river in Louisiana. Their career in the rebel territory is fully stated in the lengthy and most ingenious affidavits, which have been annexed to their claims. (Rec. No. 112, pp. 25, 36.) They certainly thrived and prospered there beyond the common; for, when the Union forces invaded the Red river country in March, 1864, they had accumulated not less than 2,500 bales of cotton, and were actually in possession of a permit illegally given in January (30th,) 1864, by the United States Chief Quartermaster of the Department of the Gulf, and approved, as they allege, (though it is to be hoped the fact is not truly stated,) by the Commanding General at New Orleans, authorizing the transportation of this large amount of cotton to that city. (Rec. No. 112, pp. 32, 83.) It does not appear in how much of this cotton A. W. McKee, the rebel cotton agent, and his relative J. H. McKee, who lived on the Union side of the lines, and whose name is seen on the permit unlawfully issued by Colonel Holabird, as the claimants allege, with the approval of General Banks, had an interest. We do know that a portion of the 2,500 bales of cotton which these men profess to have accumulated, by evil intercourse with rebels and traitorous service of the Rebel Government for three years, are the 935 bales now claimed, and which they allege were delivered to them by A. W. McKee, the rebel

cotton agent, on January 6, 1864, a few days before the issuing of the permit of Col. Holabird in which appear the name and signature of J. H. McKee. (Rec. No. 112, p. 83.) This is a curious circumstance, very suggestive of a suspicion, which a careful analysis of this record will prove to be a fact, that these McKees, cousins, as we are informed, and adherents respectively of the Union and rebel cause, in the civil war, one serving the rebels at Alexandria, and the other the Federal government at New Orleans, have an interest in the subject-matter of this controversy not compatible with the exclusive ownership alleged by the claimants.

The story of the claimants seems to be this:

At the outbreak of the rebellion they were in the Southern country; Withenbury, with his steamboat at New Orleans; Doyle, with his boat on the Red river. With stronger affection for their boats than for their country, they voluntarily remained in the rebel region, and soon found abundant employment in the transportation service of the rebel army.

When New Orleans was recovered Withenbury says he made a strenuous but abortive effort to return with his boat to that city. Doyle's boat was actually at the wharf in New Orleans when Farragut arrived, but he deliberately towed her into the rebel region beyond. This fact appears in the proofs. (Rec. No. 112, p. 113.) It also appears by the proofs that there was no substantial difficulty in coming down to New Orleans from the Red river in May 1862. (Rec. p. 103.)

In September 1862, A. W. McKee was appointed as we have learned, cotton agent at Alexandria. He had been a citizen of Ohio. He was then a rebel, holding a most important and confidential office in the

Rebel Government, while Withenbury and his friend Doyle professed to be loyal to the United States and were also in the employment of the Confederacy. It seems that they agreed at once to unite their fortunes and interests. McKee was to make use of the cotton confided to him, upon what any honest rebel would regard as a sacred trust, for the purpose of purporting to pay Withenbury and Doyle for the services of their boats, while Withenbury and Doyle were to seek the Union forces on their arrival in the rebel region, and so ingratiate themselves with the Union officers by proffers of service and professions of loyalty, as to obtain permission to carry on their traffic in the rebel region, and a permit to bring the avails to New Orleans, whenever their amount justified them in abandoning that region. This was, we have no doubt, substantially the arrangement entered into between these three conspirators at Alexandria in the fall of 1862.

Accordingly in the spring of 1863, when Banks and Porter approached Alexandria for the first time, Withenbury visited those officers and "offered to go with them up the river if they should go higher, and to aid them in any way in his power." (Rec. No. 112. p. 27.) Withenbury asserts that he then obtained a promise from General Banks in consideration of his services, to protect the property which he might accumulate in the rebel region, and express permission to remain there and carry on his business, after the retreat of the Union forces, he engaging at the same time to play the spy, for the benefit of the Union forces until they should return to that region. (Rec. No. 112. p. p., 76 77.) The next movement was made by Captain Doyle, who went to New Orleans in January 1864, in

anticipation of a second invasion of the Red river country by General Banks. The parties had accumulated by this time 2,500 bales of cotton—ostensibly the property of Withenbury and Doyle. On the 6th of January 1864, McKee had executed a bill of sale to them for the 935 bales now in controversy. The understanding between the three parties being, that Doyle should go to New Orleans and get a permit from General Banks to bring the whole 2,500 bales out of the rebel region and a guarantee of protection from the United States. Doyle is assisted through the rebel lines by McKee. At New Orleans he meets J. H. McKee, a relative of his friend A. W. McKee, the rebel cotton agent. (Rec. No. 112, p. 69.) The result of their interview was the issuing of the permit on pages 82 and 83 of the record, signed by Col S. B. Holabird and J. H. McKee, with the approval as alleged, of General Banks, authorizing Doyle to bring the 2,500 bales of cotton to New Orleans. With this permit in his pocket, Doyle accompanied General Banks on the U. S. transport Black Hawk to Alexandria. Thus engaged in the service of the United States as pilot and spy he went at once to meet McKee at Point Coupee Parish, and on March 6, 1864, produced the permit obtained at New Orleans. (Rec. No. 112, p. 59.)

The conspiracy was thus fully executed. The parties had amassed 2,500 bales of cotton. McKee had performed what he had engaged in the fall of 1862. Withenbury & Doyle, had fully established the desired relations to the Union officers as friends and spies; they were under the protection, and in the service of the United States, and they had a permit to bring all this property within the Union lines. The

subsequent history of the parties may be briefly told: Withenbury & Doyle retreated with General Banks, to New Orleans; McKee was tried, as stated, by court martial and condemned to death.

The last character assumed by Withenbury & Doyle, in this eventful business, is that of claimants for this cotton, with A. W. McKee as their chief witness. Their positions might be reversed without impairing the substantial truth of the case.

(*c.*) The bill of sale executed in favor of Withenbury & Doyle, by A. W. McKee, is dated January 6, 1864, and professes to have been given in part consideration of the amount due to them for the *value* of their steamers Homer and Vigo, and other services of the same. (Rec. No 112, p 54.) McKee, in one of his numerous depositions, explains that the consideration is wrongly described in the bill of sale, it being wholly on account of the services of the boats, and their owners, (Rec. p. 74.) McKee professes that he settled and adjusted the account as early as August 22, 1863, though of course, he had no authority whatever to do so then or at any time. (Rec. p 138.) He says that he, at that time, reserved and set aside in his private desk, for the claimants, the two vouchers or certificates held by him for the "Simmons and Tatum cotton." What became of these vouchers or receipts is not shown. McKee says, at the time he delivered to Doyle the bill of sale, in January, 1864, he gave him an order for the cotton. (Rec. No. 112, p 138.) Doyle speaks of receiving an *order*, but not the vouchers signed by Simmons in December, 1862. (Rec. p 35.) That order, it appears, was lost on the retreat of Doyle from the rebel country. The bill of sale was preserved. (Ibid.)

The consideration of this alleged transfer is variously stated by McKee, who was examined several times, in his elaborate depositions. At one time he would seem to wish to be understood as if it were work and labor performed by the claimants in removing cotton from the Red to the Sabine river, under military sanction and order. (Rec. No. 112, p 68;) and at another, it appears as if he intended to state, that the consideration of this particular transfer was the general services of the claimants to the Confederate government, rendered in 1861, and 1862. (Ibid, p 157.) In one of his depositions McKee swears that the understanding he professes to have had with Withenbury & Doyle, in August, 1863, touching the transfer of the "Simmons and Tatum cotton," was submitted to and approved by the rebel Lieut. Col. Broadwell, chief of Kirby Smith's cotton bureau, (Ibid, p 71.) But there is not a particle of evidence to corroborate this, and the statement is not to be believed, were it important, as it is not, on the unsupported testimony of McKee.

But it is not important here to analyze the statements of McKee. It is perfectly apparent, on the most superficial review of them, that they were most carefully and ingeniously prepared, perhaps in writing, with the view of harmonising them with the concurrent testimony of Withenbury & Doyle, and making a consistent narrative, which should defy legal criticism; but the very consistency of it suggests a most unfavorable suspicion of its entire integrity.

Posession, actual or constructive, was never taken by the claimants of any part of the 935 bales embraced by the alleged bill of sale of January 6, 1864. The vouchers or receipts given by Simmons, on the deliv-

ery of the cotton to the Rebel Government, were not passed as has been stated, to the claimants, but they remained, so far as we are informed, in the possession of the "cotton agency," at Alexandria. (Rec. M, 112. p. 95.)

III. The second claim here submitted for adjudication, is that of Greiff & Zunts, citizens of Louisiana, residing in New Orleans, before and at the time of the time of the capture, who allege that the Louisiana State Bank at New Orleans, lawfully acquired the 935 bales of cotton in controversy, on September 4, 1863, by transfer from the Rebel Government, under the legal order of the rebel General E. Kirby Smith, commanding the Trans-Mississippi Department, and that they (the claimants,) purchased the same on March 18, 1864, under a valid contract duly made with the said Louisiana State Bank.

(*a*) On the 28th of October, 1862, the president of the Louisiana State Bank, J. M. Lapeyre, requested permission, on behalf of the bank, of the military authorities at New Orleans to invest the amount of Confederate treasury notes in possession of the bank, (about twelve hundred thousand dollars) in cotton outside of the military lines of the United States, and bring the same to New Orleans, to be disposed of there, or reshipped to a foreign port, according to circumstances. (Rec., No. 246, p. 94.)

This permission was granted by General G. F. Shepley, military governor of New Orleans, with the concurrence of Major General Butler, in command of the Department of the Gulf, (ibid, pp. 50, 51;) and Messrs. Stevenson and Greene, agents of the bank, in November, 1862, set out from New Orleans and passed beyond the Union lines into the rebel region,

with about a million dollars in confederate currency in their possession, under a permit or safe-conduct from the United States military authorities. (Ibid, p. 55.) Stevenson had been, or was, a director of the bank. It appears that he was at the time an officer also of the rebel army. Greene died soon after he left New Orleans. The character and contents of the permit issued to these agents are not given in the testimony. General Shepley states, "the Confederate notes were sealed up in my presence, and the permit so pasted on the packages, that nothing could be inserted or extracted before passing the lines." (Ibid, p. 51.)

Lepeyre, the president of the bank, says "there was no written permit issued to the bank to make the investment; but the fact of the agent being permitted to go out for that purpose was deemed sufficient." (Ibid, p. 61.)

It would seem that no permit or license was given to the agent to purchase cotton and ship it to New Orleans, and that what is termed a *permit* was merely a military pass or safe-conduct within and through the Union lines, in favor of the agent and the confederate notes in his possession.

(*b*) With the Confederate currency thus taken from New Orleans, Stevenson bought between eleven and twelve thousand bales of cotton, lying in the Red river country, in Louisiana, and in Texas adjoining, and in the southern portion of Arkansas, adjoining Louisiana, near Red river. (Rec., No. 246, p. 56; ibid, p. 61.

(*c*) In August, 1863, Stevenson is at the headquarters of Lieutenant General E. Kirby Smith, at Shreveport; and on the 28th of that month receives an *order*

from that rebel general, addressed to him as *Captain* Stevenson, to proceed to Alexandria, and confer with Major A. W. McKee, (the treasury cotton agent,) in reference to the best arrangement for disposing of the government cotton east and south of that place. *Captain* Stevenson was directed to receipt to McKee for the cotton purchased by C. G. Young, and obtain the transfer of the planter's receipts in lieu of those he held for the cotton purchased for the bank, at New Orleans, in the Red river country. Several other *orders* are given in this most extraordinary document—extraordinary when it is considered that the person to whom it was addressed was at once a rebel officer and the confidential agent of a bank in New Orleans, employed with the knowledge and sanction of government officers there. (Rec., No. 112, p. 116.) The important fact, in connection with this document, is that it was given pursuant to an arrangement effected between Kirby Smith and Stevenson, by which the latter agreed to exchange the cotton purchased by him on the Red river, for the cotton on the Ouachita, purchased for the rebel treasury department by McKee; the object being, on the part of the rebel general, to get cotton on the Red river, which could be easily transported overland to the Rio Grande, in the place of cotton lying near the Mississippi, and exposed to the operations of the Union forces on the streams where it was stored.

(*d*) On September 4, 1863, John A. Stevenson, as "Confederate States agent," appeared with the order of Kirby Smith just mentioned, at the office of the cotton agency at Alexandria; and, on that day, received from Milton J. Rhorer, a clerk of McKee, the

seller's receipts or vouchers for 16,989 bales of cotton purchased by C. G. Young, the sub-agent, for the Rebel Government. (Rec. No. 112, p. 116.) McKee was absent at the time in Houston, Texas, whither he had gone in May, 1863, on the advance of the Union forces toward Alexandria; and it appears that this delivery of the receipts mentioned to Stevenson, under Kirby Smith's order, occurred without his knowledge.

It fully appears that the two receipts held by McKee for the 935 bales purchased from Simmons were not delivered to Stevenson among the receipts transferred to him by M. J. Rhorer, on the 4th of September, 1863. These two receipts, it seems, were in the possession of McKee, in Texas. They had been taken to Texas on the advance of General Banks in the spring of 1863, but had not been returned to Alexandria. McKee, in his testimony in the case of Withenbury and Doyle, states that in August, 1863, he had placed these two receipts in his private desk, and thus set them apart for Withenbury & Doyle. (Rec. No. 112, p. 138.) It is probable that this alleged setting apart of the Simmons' receipts as far back as August 22, 1863, was an after thought, intended to meet and cut out any title to this lot of cotton that might be set up by the bank as acquired anterior to the bill of sale to Withenbury & Doyle, of January 6, 1864. The fact, however, is indisputable that the Simmons receipts were in Texas and not at Alexandria, in September 1863, when Stevenson visited the cotton agency, and that they were not delivered to, or receipted for, by Stevenson at that time. M. J. Rhorer testifies: "Some time in May, 1863, as the Union forces, under Major General Banks, were approaching Alexandria, the office in which he was clerk, including all the receipts

then executed for the purchase of cotton (among others that of Simmons before mentioned) were removed from Alexandria to the State of Texas. After the retreat of General Banks, and in the fall of 1863, General Kirby Smith ordered the office to deliver to Captain John A. Stevenson, all the receipts for cotton which the office then had. The receipts then at the agency, amounting to about 16,000 bales of cotton, were delivered to said Stevenson. The receipts which had been sent to Texas, including that of Simmons, were not delivered to Stevenson, as they were not at the office of the agency, not having been returned from Texas." (Rec. No. 246, p. 44.)

It is thus perfectly clear that the 935 bales of the "Simmons & Tatum" cotton were not embraced by the arrangement of exchange entered into by Stevenson with the rebel general, and that Stevenson and the bank obtained no right or interest to or in respect of that particular lot of cotton under the agreement between the parties.

(e) Having received the receipts for the 16,000 and odd bales in the possession of McKee on the Ouachita river, Stevenson specially deposited his own receipts, for the 11,500 bales on the Red river, with a Confederate officer, with the understanding that the same were not to be used until he got bona fide possession of the Ouachita cotton and realized from it. (Rec. No. 112, p. 135.)

Stevenson further swears, that he was not to give, under his agreement with Kirby Smith, entire possession of the cotton on the Red river, until fully placed in possession of those on the Ouachita, and until he had full permission of the Federal Government to

bring the cotton within their lines. (Rec. No. 246, p. 56.

Stevenson carried the receipts the had received at Alexandria to New Orleans, and endeavored to get permission of the Federal authorities to ship the cotton to England, but failed. (Rec. No. 112, p. 124.) Thus failing to obtain the permission of the Federal authorities to bring the cotton to New Orleans for shipment to England, the contract was rescinded by Stevenson, and the parties were remitted to their original property—the bank being restored in its right to the cotton on the Red river, and the rebels to whatever right they had to the Ouachita cotton. Stevenson further states, that he received back the title papers for the cotton on the Red river, which he had deposited specially, and continued to take care of his own cotton, abandoning the former project of exchange. (Rec. No. 112, p. 136.) In this connexion it may be mentioned, that Stevenson swears that the receipts for the Ouachita cotton were left by him at Vicksburg, and after the fall of that place, he never saw them. (Rec. No. 246, p. 59.) He also fully states what became of his Red river cotton. A portion of it, he says, was burned, a portion stolen, and he shipped nearly 7,000 bales of it to the bank at New Orleans. (Rec. No. 246, p. 56.) For what was burned by the rebels he claimed indemnity, but he says he never got it. (Rec. No. 112, p. 136.) Thus it appears, that the agreement for an exchange of cotton, between the rebel military authorities and Stevenson, on behalf of the bank, was completely rescinded, annulled, abandoned, in fact and law. The documents of title held by Stevenson were returned to him by the Confederate officers who held them; the bank resumed

possession, if it had ever lost it, of its own cotton on the Red river, and a large quantity of it was shipped to New Orleans. This exchange never did include, as has been shown, the particular lot now in controversy, as the title papers therefor were not delivered to Stevenson, or receipted for by him. As to the fact, whether the "Simmons and Tatum" cotton was included in the receipt given by Stevenson to M. J. Rhorer, in September, 1863, it may mentioned, that while Stevenson says it was the receipt itself shows, as printed on page 134 of record No. 112, that it included only the cotton the vouchers for which were in the possession of the cotton agency at Alexandria.

Stevenson swears: "I gave Mr. Rhorer a receipt for the full list of cotton delivered to me, *including those lots for which he did not have the planter's receipts*, he writing on the bottom of said last receipts an explanation, that the said receipts were not in his possession, and would be delivered to me as soon as they would be received." (Rec. No. 246, p. 56.) This is contradicted by the receipt itself, in duplicate, given by Stevenson, in which no such memorandum as that spoken of by Stevenson appears, and is also denied, in effect, by the clerk, Rhorer, in his testimony. (Rc. No. 112, p. 134; Rec. No. 246, p. 44.)

(*f.*) The next fact is, that on March 18, 1864, the claimants, Greiff and Zunts, and Stevenson, on behalf of the Louisiana State Bank, entered into a contract at New Orleans, by which Stevenson, as agent, purported to sell to the claimants all of the cotton belonging to the Bank, and purchased by him, then in the Ouachita country, and the Red river country, on certain terms specified. (Rec. No. 246, p. 41.) It is upon this contract that Greiff and Zunts base their claim of own-

ership of the cotton in controversy here. The claim set up, is to cotton described in the contract as belonging to the bank, and acquired by Stevenson, in the Ouachita country. It has been fully shown:

1st. That the bank never acquired any right, title, or interest, in or to the "Simmons and Tatum" cotton, in virtue of the transaction between Stevenson and Kirby Smith, in September, 1863. That transaction contemplated an exchange, on the part of the Rebel Government, of so much of its cotton on the Ouachita as was embraced by the receipts then in the cotton agency at Alexandria, for the cotton of the bank upon the Red river. It has been seen that there were in the possession of the agency, at that time planter's receipts for 16,989 bales of cotton, and that receipts for the 935 bales now in controversy were in Texas, and not in the possession of the agency. The receipts held by the agency were delivered to Stevenson, and he gave a voucher for them, which did not include the receipts remaining in Texas. No arrangement or agreement of any sort was had with reference to the cotton not included in the planter's receipts, taken possession of by Stevenson. That particular cotton remained unaffected by the transaction between Kirby Smith and Stevenson, and the transfer of receipts which occurred in pursuance of it. Whatever might be the rights of the bank, under the state of facts exhibited by the records, in respect to the 16,989 bales embraced by the receipts delivered to Stevenson, there can be no question, that as respects the cotton represented by the receipts not transferred to Stevenson, on the occasion referred to, no right or interest in or to *that* cotton, which includes the 935

bales before the court, ever vested in the bank by the force and effect of the transaction between its agent and the Rebel general.

2nd. That it further appears that this contract of exchange was completely rescinded, and abandoned by mutual agreement. It was a contingent contract, depending on the ability of Stevenson to obtain possession of the property on the Ouachita river, and premission from the Federal authorities to bring the cotton within their lines. These contingencies never occurred. Stevenson never obtained possession of a bale of the cotton, nor did he get a permit to ship the cotton to Europe as he desired to do. He accordingly resumed possession of his Red river cotton, and shipped 7,000 bales of it to New Orleans. It further appears that the documents of title of the Red river cotton which had been placed by Stevenson on special deposit in the hands of a Confederate officer to await the consummation of his arrangements at New Orleans, were taken back when it was determined that the requisite authority was not obtainable from the Federal officers.

The Rebel Government were thus fully restored to whatever right it had in the Ouachita cotton, as if no exchange had ever been contemplated or attempted.

All the parties cognizant, at the time and place of the facts in relation to the negotiations for exchange fully understood that the arrangement had been wholly set aside and annulled by mutual consent.—(Rec. No. 107, pp. 63, 119; Rec. No. 112, p. 126; Rec. No. 246, p. 56.)

Thus it appears that, at the time of the execution of the contract under which this claim is made by

Greiff & Zunts, the Louisiana State Bank was not the owner of any cotton in the Ouachita country, and no right, title, or interest in or to any cotton in that country passed to the claimants under and by virtue of the contract mentioned. It is not pretended that the bank ever had an interest in any Ouachita cotton, save that which was the subject matter of the exchange referred to.

Lastly, it may be stated in reference to this contract that owing to the failure of Greiff & Zunts to comply with the conditions it imposed, their right to any of the cotton obtained through the agency of Stevenson, and shipped to New Orleans was denied by the representatives of the bank. The contract required Greiff & Zunts to furnish transportation and to advance all moneys necessary to pay charges on the cotton, but it appears that those conditions were not fulfilled, and the contract was regarded as annulled by the liquidators of the bank.—(See Rec. No. 107, p. 122.)

IV. The following is a *resume* of the principal events in the history of the cotton in question embraced by the foregoing statement of the claims before the court for adjudication:

October 1862.	McKee appointed cotton agent at Alexandria.
December 1862.	935 bales of "Simmons & Tatum cotton," purchased for Rebel Government by McKee.
August 3, 1863.	Cotton bureau for Trans-Mississippi department, established by Kirby Smith.

August 22, 1863.	Alleged settlement and agreement between McKee and Withenbury & Doyle, and receipts for this cotton set apart for them, as alleged by McKee.
September 4, 1863.	Receipts for 16,989 bales cotton on Ouachita, taken by Stevenson.
January 6, 1864.	Bill of sale by McKee to Withenbury & Doyle for this cotton.
March 18, 1864.	Contract between Grieff & Lunts and Louisiana State bank.

FIRST POINT.

By well settled principles of the public law of war, applicable to the late hostilities, as well as by the operation and effect of the Statute of July 13, 1861, the alleged transaction and contract between Withenbury & Doyle and A. W. McKee, in August, 1863, or January, 1864, in respect to the cotton in controversy, as well as the alleged transaction and contract in September, 1863, between the Louisiana State Bank and the rebel military authorities, were each and both, in contemplation of law, null and void, and vested no title or ownership to or in the said cotton in the said Withenbury & Doyle, or the said Louisiana State Bank, or either or any of them.

(*a.*) It is a *concessum*, we suppose, in these cases, that the claimants, Withenbury & Doyle, were, at the time of the alleged contract on which they base their claim of ownership, citizens of, and domiciled in, the State of Ohio, and that the Louisiana State Bank, at the time of the transaction through which it is alleged

that corporation acquired title to this property, was a corporation domiciled in the city of New Orleans; and, further, that the parties with whom the claimants, Withenbury & Doyle and the New Orleans Bank, respectively contracted, to wit, A. W. McKee and the rebel military authorities at Shreveport, were citizens of, and domiciled in, a part of the State of Louisiana, in a condition of insurrection against the United State, or other insurrectionary States or districts. Again, it will be admitted, as a fact in law duly established and declared by adjudication, (The Venice, 2 Wallace, 258,) and Proclamation of the President, (March 31, 1863,) that New Orleans, at the time of the alleged contracts, was not, in the sense of the public or statute law, in a state of hostility against the United States.

(*b.*) When the late insurrection culminated in WAR, it brought into operation that body of public law which defines the duties and determines the rights of opposing belligerents, and those adherent to their respective jurisdictions; and among the principles best defined and most frequently applied in that body of jurisprudence—a principle "grown hoary under the reverend respect of centuries"—is this; that all private, voluntary, unlicensed business communication or intercourse with enemies is absolutely interdicted, as fundamentally inconsistent with the relations subsisting between the parties; and every contract attempted to be made in the course of such communication or intercourse, must be treated as having no legal existence whatever, and incapable of vesting any rights in the party asserting it, enforceble in a court of justice.

This statement of that great and wise principle

embraces the substance and spirit of those famous declarations of the doctrine by LORD STOWELL, JUDGE STORY, and CHANCELLOR KENT, which have passed into the text of every English or American treatise on the public law of war.

In his masterly judgment in the case of the HOOP, (1 Rob., 217,) LORD STOWELL, after discussing at large the entire question, says:

"A State in which contracts cannot be enforced, cannot be a state of legal commerce. If the parties who are to contract have no right to compel the performance of the contract, nor even to appear in a court of justice for that purpose, can there be a stronger proof that the law imposes *a legal inability to contract? To such transactions it gives no sanction; they have no legal existence*; and the whole of such commerce is attempted without its protection and against its authority."

Mr. JUSTICE STORY says, in the case of BROWN *vs.* UNITED STATES, (8 Cranch, 136:)

"No principle of national or municipal law is better settled that that *all contracts made with an enemy during war are utterly void.* This principle has grown hoary under the reverend respect of centuries, and cannot now be shaken without uprooting the very foundations of national law."

CHANCELLOR KENT, in GRISWOLD *vs.* WADDINGTON, (16 John, 483,) declares the doctrine thus:

"I think I may venture to hazard the assertion that there is no authority in law, whether that law be national, maritime, or municipal, for any kind of

private, voluntary, unlicensed business communication or intercourse with an enemy. It is all noxious, and in a greater or less degree it is criminal. Every attempt at drawing distinctions has failed; all kinds of intercourse, except that which is hostile, is illegal. *The law has put the sting of disability into every kind of voluntary communication and contract with an enemy, which is made without the special permission of the government.* There is wisdom and policy, patriotism and safety, in this principle, and every relaxation of it tends to corrupt the allegiance of the citizen, and prolong the calamities of war."

PHILLIMORE, (3 Int. Law 109,) says:

"This rule of interdiction in no degree arises from the commerce being carried on by sea; *the principles of public policy and public law equally forbid commercial intercourse by land.* * * * *

"*All* contracts with the enemy are *null* and *void.* In fine, *every communication*, however circuitous, is prohibited, unless it be sanctioned by the special authority of the Government."

In SCHOLEFIELD v. EICHELBERGER, (7 Pet. 592,) this court said:

"The doctrine is not at this day to be questioned, that during a state of hostility the citizens of the hostile States are *incapable of contracting with each other.* For near twenty years this has been acknowledged as the settled doctrine of this court. At present it may be safely asserted that *there is no recognized exception* but the permission of a State to its own citizens."

MR. JUSTICE JOHNSON, in his eloquent opinion in the leading case of the *Rapid*, (8 Cranch 155,) declares:

"In the state of war, nation is known to nation only by their armed exterior, each threatening the other with conquest or annihilation. The individuals who compose the belligerent States exist, as to each other, in a state of utter occlusion. If they meet, it is only to combat. The universal sense of nations has acknowledged the demoralizing effects that would result from the admission of individual intercourse. The whole nation are embarked in one common bottom, and must be reconciled to submit to one common fate. Every individual of the one nation must acknowledge every individual of the other nation as his enemy, because the enemy of his country."

And referring to this opinion in GRISWOLD *v.* WADDINGTON, Chancellor Kent says:

"Here, then, we have the final consummation of this discussion, and the sanction of the doctrine solemnly given by the highest judicial authority in the United States. It reaches to all interchange or transfer or removal of property to all negotiations and contracts, to all communication, to all locomotive intercourse, to a state of utter seclusion, to any intercourse but one of open hostility, to any meeting but in actual combat."

(*c.*) The prohibition in the 5th section of the non-intercourse act of July 13, 1861, (12 stats., 155,) of all commercial intercourse by and between the insurrectionary States and districts, and the citizens thereof, and the citizens of the rest of the United States, so long as the *condition of hostility* should continue, was but declaratory of the interdiction upon such inter-

course which would have existed under the principles of the public law applicable to the changed relations, between the citizens of the loyal and insurgent States, superinduced by the state of war. But as the authoritative expression of the will of the law-declaring power of the National Government, laying its injunctions in terms stern and mandatory upon all commercial intercourse between citizens of the insurgent districts and citizens of the rest of the United States, it must be regarded by all judicatures acknowledging the law of the United States as the supreme law of the land as removing all ground of doubt, if any such could have existed, that a transaction in contravention of the principles of the public law, to which we have adverted, is wholly void, and cannot be alleged to have had, or have, any legal existence whatever. In HARRIS *vs.* RUNNELS, (12 How. 83,) this court said: "Contracts in violation of statutes are *void*, and they are so whether the consideration to be performed or the act to be done be a violation of the statutes. A statute may either expressly prohibit or enjoin an act, or it may impliedly prohibit or enjoin it, by affixing a penalty to the performance or omission thereof. It makes no difference whether the prohibition be expressed or implied. *In either case a contract in violation of its provisions is void.* The rule is certain and plain."

In GRISWOLD *vs.* WADDINGTON, Chancellor Kent said: "There is to my mind something monstrous in the proposition, that a court of law ought to carry into effect a contract founded upon a breach of law. It is encouraging disobedience and giving disloyalty its unhallowed fruits. There is no such mischievous doctrine to be deduced from the books."

CHITTY ON CONTRACTS, AM. ED, 767.

(*d.*) The statute of July 13, 1861, provides that commercial intercourse between the persons as to whom it is prohibited, may be *licensed* and *permitted* by the President, "in such articles, and for such time, and by such person as he, in his discretion, may think most conducive to the public interest."

With this statute in force, plainly and directly declaring the illegality of all unlicensed intercourse between citizens of the respective districts, and just as plainly and directly providing for the licensing of such intercourse by the President *alone*, it is in evidence, in these cases, that military officers, without pretence of authority from the President, and without any intervention by the Secretary of the Treasury, under whose rules and regulations all licensed inter, course could alone be carried on, undertook to sanction, if not to license, the transactions, or some of them in which these claims originated, thus not only usurping an authority confided to the President alone, but giving countenance to proceedings which it was their duty to discountenance and punish. Of course, the sanction or permission of these officers cannot avail the claimants, or either of them, as giving the slightest color of authority to these illegal acts of intercourse with rebel enemies.

This court has twice adjudicated, that the power to license commercial intercourse with those people, on the part of citizens of the loyal districts, was confided by Congress exclusively to the President, and it was usurpation of authority for any other officer, civil or military, to attempt the exercise of that power.

THE REFORM, 3 WALLACE, 632.

THE SEA LION, 5 WALLACE, 647.

In time of war one of the most dangerous evils with which government has to contend is this very practice of the carrying on of intercourse with enemies. Even during our Revolutionary war Congress was called upon on several occasions to express its abhorrence of that practice and its sense of the dangers with which it was fraught, and to recommend to the Legislatures of the States the adoption of the severest measures for the punishment of those guilty of the crime.

The several Resolutions of the old Congress on this subject are cited by Chancellor Kent, in his opinion in the great case of GRISWOLD *v.* WADDINGTON, and they are stated by him to be only declaratory, by "that grave, wise, and illustrious assembly," of the principle, that "all intercourse, correspondence, and dealing with an enemy in time of war, were, *by the mere force and circumstances of war itself, unlawful.*"

The same evils, of which Congress complained in 1782, appear to have existed, though in a form of greater magnitude and peril, in eastern Louisiana, at the dates of the transactions under consideration. By its Resolution of June, 1782, Congress recited that the enemy were encouraging a clandestine traffic, and that some of the inhabitants, prompted by a *sordid attachment to gain, or by a secret conspiracy with the enemies of their country*, were wickedly engaged in carrying on this illicit traffic, whereby a market was provided for *British merchandise, the circulating medium exported*, &c., and they recommended to the State legislatures "to adopt the most efficacious measures for suppressing all traffic and illicit intercourse between their citizens and their enemy, and to impress on the citizens the baneful consequences apprehended

by Congress from a continuance of this *illicit and infamous traffic.*"

After citing this passage, Chancellor Kent asks: "To what higher or to what purer source can we resort for the declared sense of this country? Certainly no assembly of statesmen, in any age or nation, ever displayed a more constant spirit of wisdom and energy than the Congress which guided the councils, supported the armies, and sustained the courage of their countrymen through the perilous conflict of the revolution."

SECOND POINT.

This cotton, having been *sold* by the owner and planter, John S. Simmons, to the Rebel government, *with intent* to suffer the same to be used or employed in aiding, abetting, and promoting the rebellion, and the same having been *purchased* by the Rebel government *with intent* to employ the same for such unlawful purpose; and the said cotton, furthermore, having been knowingly *used* or *employed* by the owner thereof in aiding, abetting, and promoting the rebellion, became, by such act of sale and purchase, and by such guilty employment, forfeited to the United States, under and by force of the statute of August 6, 1861, and no title to the said cotton was or could be acquired by the claimants, Withenbury & Doyle, or the Louisiana State Bank, or either, or any of them, by purchase or transfer from the said Rebel government.

(*a.*) When this cotton was purchased from Simmons by the Rebel agent, it was purchased with the specific *intent* denounced in the statute of August 6, 1861, to wit: the intent of using and employing the same in aid of the rebellion. And it is clear its sale by Sim-

mons was with the like intent on his part to suffer the cotton to be used by the rebel authorities in aid of the rebellion; and we contend that by the legal intendment and effect of this statute such sale and purchase of the cotton, independently of the actual use to which the property was applied, operated as the statutory transfer to the United States of right to the cotton at the time of its sale and purchase with the guilty intent, on the part of vendor and vendee, mentioned in the statute; so that at the time of the transactions between Withenbury & Doyle and A. W. McKee, and those between the agent of the Louisiana State Bank and the military authorities at Shreveport, there was no right or title in this cotton vested in the Rebel Government which was capable of transfer to one or another of those parties. Neither Withenbury & Doyle nor the Bank took any valid title, because their alleged vendors possessed no valid title to transfer.

U. S. *v.* 1960 bags coffee, 8 Cranch, 398.
U. S. *v.* the Mars., 8 Cranch, 417.
Gelston *v.* Hoyt, 3 Wheaton, 311.
U. S. *v.* Caldwell, 8 Howard, 382.

(b) Whatever may be held to be the rights of a bona fide purchaser of property liable to forfeiture, under this statute, acquired before seizure or capture, and without notice of the offence which subjects the property to forfeiture, that question can never arise here in respect to the alleged purchasers of this property from the rebel authorities, as both Withenbury & Doyle and the Bank (under whom the claimants, Greff & Zunts purport to have derived title,) had full knowledge and notice of the character of this cotton as property obtained by the rebel government, for the sole

purpose of waging war against the United States. The property was COTTON, which this court has judicially stigmatized as "the chief reliance of the rebels for means to purchase munitions of war, and an element of strength to the rebellion." (2 Wallace, 404.) And it is in proof here that this particular cotton was held as the basis of the rebel loans in Europe, and that this fact was known to both Withenbury & Doyle and the Bank, at the time of their transactions with the rebel agents. They were thus purchasers, (if they should be held such,) with full notice of the liability of the cotton to forfeiture, and, as against the United States, acquired no valid title to the property.

THIRD POINT.

By the provisions of the 5th and 6th sections of the confiscation act of July 17, 1862, Chap. 195, and the President's proclamation issued July 25, 1862, pursuant thereto, confiscating the property of persons engaged in the rebel service, and of all persons aiding and abetting the rebellion after 60 days from the date of said proclamation, this cotton was forfeited to the United States, and all sales, transfers, and conveyances of the same, were null and void, to all intents and purposes whatever, but especially as against the rights of the United States under said act; and the alleged sale and transfer of this cotton by the rebel authorities to the claimants, Withenbury & Doyle, or the Louisiana State Bank, at the times they purport to have been made, were utterly void and vested no title, whatever, to the said cotton in them, or either or any of them.

(*a*) The 5th section of the confiscation act of July

17, 1862, (12 Stats, 590,) confiscates the property and estate, moneys, stocks, credits and effects of persons within the classes or descriptions named in that section, while the 6th section of the act provides that after the expiration of sixty days from the proclamation of the President, a period which terminated on September 25, 1862, the property of all persons in the United States still engaged in aiding and abetting the rebellion shall be liable to seizure and confiscation. It is further provided in respect to the property of persons within the 5th and 6th sections of the act, that all sales or transfers of the same after the liability to forfeiture attached shall be invalid and void to all intents and purposes whatever.

(*b*) We contend, that by the force and effect of these statutory provisions the sale of the cotton by J. T. Simmons, the rebel owner, could not operate as a transfer of title to the rebel government, or any of its officers or agents. It is indisputable, we think, that Simmons, by knowingly attempting to sell and transfer this cotton to the rebel treasury department in December 1862, for the purposes of the financial operations of that department, in aid of the rebellion, did himself, by such attempted sale and transfer, engage in aiding and abetting the rebellion after the expiration of the period limited by the President's proclamation; and we claim, therefore, that he was incapable of transferring or conveying title to this property to his alleged vendees or any of them, as against the United States.

(*c*) But if this were otherwise, and the property in this cotton passed in fact and law to the vendees of Simmons, then we contend that those vendees, whether they are held to be the organization known

as the "Confederate States of America," or the agents and officers of that organization who negotiated the transaction of sale and purchase in question, were unable and incompetent to convey or transfer title to the property to the claimants, Withenbury & Doyle, or the Louisiana State Bank, as against the rights of the United States under the act of Congress.

Neither Withenbury & Doyle nor the Louisiana State Bank acquired any valid title to this cotton, and the latter never having acquired any property therein, could convey no valid title to their alleged vendees, Grieff & Zunts.

FOURTH POINT.

Subordinate to the forgoing points, touching the validity of the title to the cotton asserted by Withenbery & Doyle is the proposition equally fatal to their claim of ownership, that the contract of sale which they allege as the foundation of their claim was a transaction founded upon a consideration totally and absolutely illegal, and cannot be recognized as having validity, for any purpose, in a Court of the United States. *Ex turpi cause non oritus actio, sed in pari delicto melior est conditio possidentis.*

Craig *v.* State of Missouri, 4 Pet. 410.
Armstrong *v.* Toler, 11 Wh. 258.
Schmidt *v.* Barker, 17 La. R, 261.
Kennett *v.* Chambers, 14 How. 38.

FIFTH POINT.

We submit, as an independent and transcendent proposition of public law, applicable to the subject under consideration, that all property acquired on its behalf by the constituted agents of the Rebel Govern-

ment, during the rebellion, inured to the benefit of the legitimate government, and was held by such agents as trustees of that Government, and any transfer of the same by such agents and trustees, without the consent of the lawful government, was *ultra vires*, and passed no title thereto as against the United States.

An extended discussion of this proposition in this case is unnecessary; but we hold it, nevertheless, to be sound law, pertinent to the case, and capable of being sustained upon principle and authority whenever the occasion shall arise for the presentation of the argument to this court. The correct doctrine, as to the relation of a legitimate government to property obtained for public purposes by a revolutionary or unlawful government in the exercise of *de facto* sovereignty, after the reduction of the usurping power, and the re-establishment of the lawful authority, is stated, rather than developed, in the course of the adjudication in the case of the KING OF THE TWO SICILIES *vs.* WILCOX.—(1 Simmons, N. S. 40 E., Ch. R, pp. 300–334.) That was a bill filed by the King of the Two Sicilies, upon the re-establishment of his authority after a revolution, claiming a ship in the port of London, purchased by agents of the revolutionary government, with funds contributed by the inhabitants of Sicily. On a motion for the production of certain documents relating to the matters in the bill, admitted by the defendants to be in their possession, but which they contended were held by them *as agents and on behalf of the persons who entrusted them with the money*, the VICE CHANCELLOR (LORD CRANWORTH) said: "It is impossible to say that the defendants ever were agents of all or any of the individ-

uals who from time to time composed that government. Those who, as constituting the government, stood, if they did, in the relation of *cestius que trust*, or of principals toward the defendants, ceased to fill that character when they ceased to be members of that government; so that the executive government, being now at an end, either the defendants have ceased to fill the character of trustees or agents at all, or they have become trustees or agents for the plaintiff, as the person now in the possession of the supreme authority. If they are trustees or agents at all, they are trustees or agents of the plaintiff, and not for the persons from whom, as constituting the government for the time being they received the funds."

VICE CHANCELLOR SIR L. SHADWELL, it appears, had previously overruled a demurrer filed to this bill for want of equity.

We cite the case of UNITED STATES *vs.* PRIOLEAU, (11 Jurist, Pt. c. 794,) as illustrating the course of recent adjudication in England, touching the rights of the United States to public property of the Rebel Government.

The main question in that case was as to the right of the defendant to re-imbursement, out of the proceeds of the property involved, for certain expenses incurred, on behalf of the Rebel Government, under an agreement which he held with that government. In determining that question, the Vice Chancellor laid down the doctrine that "international law, the consent of all civilized nations, had settled beyond dispute that when a *de facto* Government came to an end, and was succeeded by another government, the property of the *de facto* Government passed to its *suc-*

cessors." The following passages also occur in the opinion of the Vice Chancellor:

Sir W. P. Wood, V. C. "There are one or two points which I think are tolerably clear in this case. The first, is with reference to the right of the United States of America, at this moment, to the cotton, subject to the agreement. It has scarcely been disputed, on the present argument, and could hardly be so at any future stage of the inquiry, that this right is clear and distinct, because the cotton in question is the admitted result of funds raised by a *de facto* government, exercising authority in what were called the Confederate States of America, that is to say, several of those States which formerly constituted the United States, and constitute them now."

* * * * * *

"That being so, the right of the plaintiffs to this cotton, subject to the agreement, is, I think clear. The cases of *The King of the Two Sicilies*, and of *The King of Spain*, and other cases of the same kind, which it is not necessary to go through, shew that whenever a government *de facto* has obtained the possession of property as a government, for the purposes of the government *de facto*, the government which displaces it succeeds to all of the rights of the former government, and, among other things, succeeds to the property they have so acquired.

"Now I come to the second head, and I confess at this moment, (though, of course, it will be open to more argument hereafter,) I do not feel much doubt on the subject, namely, the question whether or not, taking this property, they must take it subject to the agreement. It appears to me, they must take it so subject. This agreement is entered into by a *de facto* government, treating with persons who have a perfect right to deal with them. I apprehend, if they had been American subjects, they might have done so, but one of them, the defendant Prioleau, is not an American subject, at least I have no evidence that he is.

He is a naturalized British subject, and he would have a perfect right to deal with a *de facto* government; and it cannot be compared with any one of those cases put in argument, of persons taking the property of another, with knowlege of the rights of that other. That is a species of argument that cannot be applied to international cases of this description, and for a very good reason. If so, there would be no possibility, during the existence of a government *de facto*, of any person dealing with that government in any part of the world. The courts of every country recognize a government (if it be carrying on the course of government, levying taxes, acquiring property, and at war, having the rights of belligerents, and not being treated as mere rebels by the authorized government of the country,) to the extent of saying, we are bound to protect our subjects who treat with that existing government *de facto*, and we must give to those subjects in our country, every right which the government de facto can give to them, and must not allow the succeeding government to assert any right as against the contracts which have been entered into by the government *de facto*; but as expressed by Lord Cranworth in the case of *The King of the Two Sicilies v. Wilcox*, they must succeed in every respect to the property as they find it, and subject to all of the conditions and liabilities to which it is subject, and by which they are bound."

It will be perceived that in the judgment of the Vice Chancellor, an important element of the case before him was the fact, that the defendant, Prioleau, was a British (neutral) subject, who had a perfect right, as he thought, to deal with the *de facto* government of the insurgents, and who might be able to acquire rights and equities in the course of such dealings, which a citizen of the United States could not acquire. It is true that he suggests, whether the rule of decision would be different in the case of an American subject in a manner rather to imply a neg-

ative answer; but the case did not call for a decision of the question, and it was not determined by the Vice Chancellor. The views of the Executive Department of this Government as to the doctrine of *successorship* adopted by the Vice Chancellor, and applied in the solution of the question before him, are expressed by Mr. SEWARD, in his letter to Mr. ADAMS, of August 10, 1865.

Mr. Seward to Mr. Adams.

No. 1,507.

DEPARTMENT OF STATE,
Washington, August 10, 1865.

SIR: I have the honor to acknowledge the receipt of your despatch No. 1,022, together with papers which contain an interlocutory decree which has been made by the Vice Chancellor in a suit of the United States against Prioleau and others, which suit was instituted for the recovery of 1,356 bales of cotton. A copy of the Vice Chancellor's reasons for the interlocutory decree is found among the same papers. The Vice Chancellor is understood to have affirmed the title of the United States to the property in question. It is with the judgment of the Vice Chancellor, and not with the reasons that he assigns for such judgment, that the United States are concerned.

In this view of the subject, it might seem proper for this government to leave the subject unnoticed. The frankness, however, which ought to be practiced in the proceedings of States, requires an explanation of the views which this government has taken of the questions which the Vice Chancellor has discussed in his reasons before mentioned.

The United States do not admit that the combination of disloyal citizens which has raised the standard of insurrection, is now, or has at any previous time, been a government *de facto*, or in any sense a political power, capable of taking, holding, giving, asserting, or maintaining corporate rights in any forum,

whether municipal or international. It is true that a different view of the character of the insurgents has seemed to find favor with some portion of the British nation, and even with the British government. It must be remembered, however, as equally true, that so often as that antagonistical opinion has been advanced by her Brittanic Majesty's government in its intercourse with the United States, it has been firmly, though, as we trust, always courteously, denied.

The United States controvert and deny the declaration of the Vice Chancellor, that they are "successors" of the rebellion; and, on the contrary, they maintain that they are now, and during all the time of the rebellion have been, just what they were before the rebellion began—a sovereign State, absolutely entitled to the regulation and control of all property and persons within the United States, subject only to the limitations of their own constitution.

It need hardly be said that the United States will hold themselves under no obligations whatever to accept of, or to conform their proceedings to, conditions which the Court of Chancery, or any other municipal court of Great Britain may have the presumption to dictate or prescribe in the present or any other litigation. They claim and insist upon the restoration of the cotton now in question; and while they are content to receive it through the decrees of the municipal tribunals of Great Britain, they insist upon their absolute right to the same through the action of her Britannic Majesty's government.

* * * * * *

I am, sir, your obedient servant,

(Signed) WILLIAM H. SEWARD.

CHARLES FRANCIS ADAMS, Esq., &c., &c., &c.

The true American judicial doctrine we hold to be, that the rebel government had no capacity, as a body politic, of acquiring the title of property, but that all property, attempted to be acquired by its constituted

agents, passed, by operation of law, to the legitimate government, the government of the United States, and was held by such agents as trustees for that government; and that no neutral and *a fortiori*, no American citizen, could acquire rights in respect to such property during the rebellion any more than a party who purchases trust property, knowing it to be such, from a trustee, in violation of his trust, can acquire an absolute title to the property divested of such trust. The purchasers of property from the rebel government became trustees *in invitum*, so to speak, for the United States.

SIXTH POINT.

We submit, lastly, as a matter of fact, that it is perfectly clear under the proofs contained in the record of the case of WITHENBURY & DOYLE, that A. W. MCKEE had no power whatever, under the authority conferred upon him by the Rebel Government, to sell or transfer this cotton to WITHENBURY & DOYLE, and that his disposition of the property in their favor, for the purpose and in the manner stated, was an act in *fraud* of the Rebel Government.

We deny that Mr. McKee had any authority to pay Withenbury & Doyle with this cotton for their alleged services to the confederacy, and we deny that, in attempting to transfer to them this property, he acted in good faith, believing that he possessed the power he assumed to exercise. There is no doubt whatever that McKee knew perfectly well that what he did was in violation of his personal and official obligations to those under whom he was serving, and that at the bottom of it all there was a secret and corrupt understanding that he should be benefitted by the consum-

mation of the intended scheme of getting this cotton beyond the limits of the confederacy. No mortal man can doubt that the permit obtained by Doyle at New Orleans on the 30th of January, 1864, and which is signed and sealed by John H. McKee, the relative of A. W. McKee, permitting him to bring the cotton now claimed, and cotton to the extent of 2,500 bales, to New Orleans, was a document intended for the benefit of the rebel cotton agent as well as of his friends and colleagues in this speculation. (Rec. 112, p. 83.) It was on the 6th of January, 1864, that McKee gave the claimants a bill of sale for the cotton now claimed. (Ibid., p. 54.) They had previously received other large amounts from McKee. Withenbury specifies 418 bales at Miller's bluff on the Ouachita. (Ibid., p. 76.) There were other lots, and the entire amount, as it appears, the parties obtained, in one way and another, and at one time and another, from this faithless agent, was 2,509 bales. (Ibid., p. 32.) As soon as the bill of sale for the "Simmons & Tatum" cotton is received, Doyle proceeds to New Orleans. McKee tells us that he gave him a letter to the rebel Brigadier General Scurry, commanding the confederate outposts on the Atchafalaya river, upon which Scurry permitted him to pass the lines. (Rec. No. 112, p. 138.) At New Orleans he meets John H. McKee. John H. McKee has testified in this case, (Rec. No. 112, p. 95) Doyle shows him "a number of bills of sales or transfers for different lots of cotton from the agent of the so-called Confederate States, together with the said agent's *orders* on the parties having the custody of the said cotton." These orders John H. McKee describes. He says they were drawn "on separate pieces of paper, but were signed by the

same agent, viz: A. W. McKee, C. S. agent, to *purchase* cotton in La.," and that these bills of sale and orders were dated at Alexandria, at the office of the cotton agency, January 6, 1864." (Ibid., p. 95.) The "C. S. agent, as it would appear, to *purchase* cotton" has become the "C. S. agent to *sell* cotton." John H. McKee is so much interested in the affairs of Doyle that he is induced to represent his unfortunate situation to General Banks, and with such success that in a few days a paper is signed and sealed by the chief Quartermaster of General Banks, which not only authorizes Doyle to bring to New Orleans the entire amount of cotton he claimed to own in the confederacy, but authorizes John H. McKee himself to go into the confederacy and bring out all cotton on which he could lay his hands, and pledges the United States Quartermaster to pay McKee eighteen cents per pound on every pound of cotton delivered by him to to the military forces of the United States. (Rec. No. 112, p. 82.) The full scope and effect of this most extraordinary document, issued it is said, but it is to be hoped not truly said, with the approbation of the Commanding General of the department, we find it very difficult to understand. That the Commanding General was not authorized, by any law, to license such intercourse and traffic with the rebel region we have already shown. That it was most impolitic and unwise on the part of the government, and most degrading and demoralizing to the individuals concerned, to countenance and carry on such traffic, all history, all experience of nations, proves. Similar intercourse with the enemy during the war of the Revolution, was stigmatized by the Congress waging that war, as criminal and infamous. It was no less criminal and infa-

mous, as violations of positive statute law, and tending to establish private interests hostile to a speedy termination of the war, and, therefore, directly opposed to the highest public interests involved, to carry on such intercourse, during the late hostilities, as was proposed by the parties in whose favor the document referred to was issued.

This document was nothing more or less than a license for the commission of treason. It gave no right to the parties who held it, save a right to pay the penalties provided for that offence. The confederate officers who arrested and tried McKee for treason, on account of his participation in this traffic, displayed a proper appreciation of the character and consequences of the evil.

This record shows that Doyle, the claimant, in company with *John H. McKee*, actually accompanied the army, with this contract and permit in their possession, on the expedition to the Red River in the following March; and on the 4th, 5th, and 6th of that month, Doyle and John H. McKee were in the company of Andrew W. McKee, the rebel agent at Point Coupee Parish, when the permit referred to was exhibited. (Rec. No. 112, p. 69.)

Why was John H. McKee there in the company of A. W. McKee?

The contract and permit obtained at New Orleans answers the question. He was there to speculate in Confederate States cotton, and to receive the aid of his relative in that enterprise.

The state of facts, thus disclosed by the record, displays some of the worst features of the late civil war in their most odious aspects.

We pass from this part of the case to consider

briefly the point how far McKee was justified by the law under which he acted in attempting to transfer the cotton in question to the claimants. The authority and duty of this agent underwent a careful examination in the Confederate district court for Louisiana, on the *habeas corpus*, issued by the judge of that court for the relief of McKee from the sentence of the military commission which had doomed him to be shot. The opinion of the judge is in the record (p. 168). It is a document prepared with care and ability, and with a full knowledge of the subject. Two of the conclusions of fact are important:

1st. That McKee was an agent of the treasury department of the confederate States, appointed for the purpose of *purchasing* cotton to carry out certain financial schemes of the government; and,

2d. That he was not an officer of the military cotton bureau, established by the rebel General Kirby Smith, at Shreveport, on August 3, 1863, his sole connexion therewith being under orders from his principal, the secretary of the treasury, to report to that bureau, and receive instructions from it, relative to the preservation or destruction of cotton, or its removal when in danger of falling into the hands of the enemy. (Rec., p. 186.)

McKee was thus an agent to *purchase* and hold cotton for the Treasury Department. This cotton was *pledged* to the European holders of the confederate loan. It was not bought for sale, or for the payment of the general debts of the Rebel Government. It was purchased for a specific purpose, and to meet specific obligations of that government. McKee's duty was simply to buy and pay for the cotton, and hold it sub-

ject to the orders of the rebel Secretary. He was not an accounting officer, and had no jurisdiction to settle or adjust accounts of creditors of the rebel government. He was a treasury agent for the purchase of cotton, and had no other office.

In August 3, 1863, as has been stated, General E. Kirby Smith assumed to exercise certain control over all the cotton belonging to the government in the trans-Mississippi department; and he established a cotton bureau, with a military officer (Lieut. Col. Broadwell,) as its head. Memminger, the rebel Secretary, understanding that this action was intended to establish means for the preservation of the government cotton when in danger of falling into the enemy's hands, directed McKee to be governed by the directions of the bureau in all that related to the preservation of the cotton, by removing it out of the reach of the enemy, or to its destruction, if it could not be preserved; that is to say, the cotton was to be removed when the enemy approached, and if not removable, it was to be burned. McKee was directed to co-operate with the cotton bureau when such measures were necessary. (Rec. No. 112, p. 176.)

It appears that soon after the organization of this bureau, it was deemed necessary to remove the government cotton from the Red river to Nibblett's Bluff, on the Sabine, and that Kirby Smith directed that persons who should engage in the service of transporting it to that point should be paid therefor in cotton. (See his order. Rec. p. 140.) McKee, it seems, attended to the removal of the cotton in his charge, and established his office in Texas.

There is some suggestion in the testimony of Mc-

Kee that Withenbury & Doyle were employed in the removal of the cotton to Texas, and that their services, in this particular, were a part of the consideration of the transfer of the 935 bales in question. (Rec. No. 112, p. 68, p. 137.) But it is to be remarked, in the first place, that not a word is said by either Withenbury or Doyle in their affidavits of claim that any such service was performed by them, or that the transfer of this cotton had any thing to do with any such service. (Rec. 112, pp. 25–36.) And, in the second place, it is to be observed, that the idea that services rendered by the claimants in removing cotton to Nibblett's Bluff, had to do with the transfer of these 935 bales to them, or that the transfer occurred under the order of Kirby Smith, referred to, is so limited and suggested in the testimony of McKee, that the conviction is irresistible, that it was intended to be thrown out as a fictitious justification for a transaction which the witness knew was not warranted by any authority he possessed. McKee further states explicitly, that the larger portion of the alleged balance due to the claimants arose out of the services of their boats rendered in the winter of 1861, and early Spring of 1862. (Rec. No. 112, p. 137.) His defence is, that as he was authorized by the commanding officer of the Department to compensate persons who should haul cotton to Texas, in kind, he had authority to pay any debts of the Rebel Government, with its property in his possession. Whether the military commander had authority or not to give a portion of the treasury department cotton, as compensation to persons who might engage in transporting the balance of it beyond the enemy's reach, neither he nor McKee had author-

ity to give any part of such cotton in payment of debts which had no relation to the preservation of the property, and contracted antecedently to its removal.

The alleged services of the claimants in 1861 and 1862, had, of course, nothing to do with this treasury cotton or its removal to Texas, under the order of Kirby Smith, in August, 1863.

Even if the military authorities had given their sanction to the transfer of the cotton in question, in payment of those services, it would not justify or excuse McKee in thus diverting it from the objects for which it was purchased by the government.

The military authorities had no power to give the cotton away for any such purpose. It was their duty to remove it if they could, and if not, to burn it. They could not confer on McKee a power which they did not themselves possess.

It is plain that this order of Kirby Smith, in August, 1863, is adduced by McKee, in order to give some color of legality to his alleged transfer of the cotton in question to the claimants at that time.

It is clear, furthermore, that he has *ante-dated* his transfer to them by six or seven months, and that it was not till January, 1864, that the arrangement was made. He says he reserved the receipts in August, 1863, but did not give the bill of sale till January 6, 1864. This selection of August, 1863, accomplished the double purpose of enabling him to base the transaction on Kirby Smith's order of August 24, 1863, and of cutting out the alleged title of Grieff & Zunts, which accrued in September, 1863.

Other cases of the employment of government cot-

ton, by persons connected with it, in paying for services rendered, and other debts of the confederacy, are referred to in the course of the testimony. But in all those instances, with the exception of one, the services rendered were in the transportation or removal of cotton, under military orders or regulation, from exposed to safer localities. They occurred on July 30, 1863. (Rec. p. 81.) on August 1, 1863, (p. 140.) and on August 24, 1863, (p. 139–40.) The solitary exception to the rule is the case of the payment to a Dr. R. A. Porter, in cotton of the value of certain hides belonging to him, seized at Alexandria and shipped to Vicksburg. This payment was made by McKee, with the sanction of the rebel General Taylor, commanding at Alexandria. (Rec. No. 112, p. 125.) This seems to be cited as a precedent for the transfer of the cotton in question to the claimants. But it is incumbent on the claimants and their witness, McKee, to show the authority of General Taylor to make any such disposition of the government cotton before it can have any bearing on the case in hand. No evidence of such an authority lawfully conferred on this officer, or any other military officer of the department, is contained in the record.

The only jurisdiction over the cotton purchased for the use of the treasury department, which the rebel Secretary ever recognized as belonging to the military authorities in that locality, was to preserve it by removal, when in danger, to safer places, if they could, and if they could not, to destroy it.

Considering the whole case in its length and breadth, we know not which to deplore the more, the "cupidity of corrupted avarice," in which this claim has its

origin, or the simulated evidence by which it is attempted to be maintained.

HENRY STANBERY,
Attorney General.
J. HUBLEY ASHTON,
Special Counsel of the United States.

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